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The writings of Thomas Jefferson

Thomas Jefferson, Andrew Adgate Lipscomb, Albert Ellery Bergh, Thomas Jefferson Memorial Association of the United States

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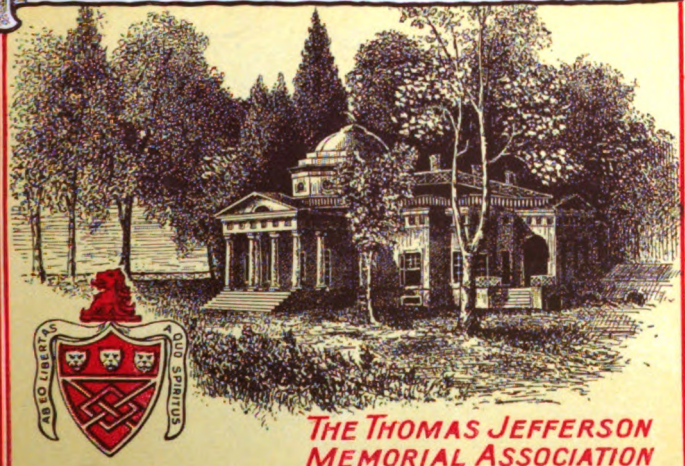

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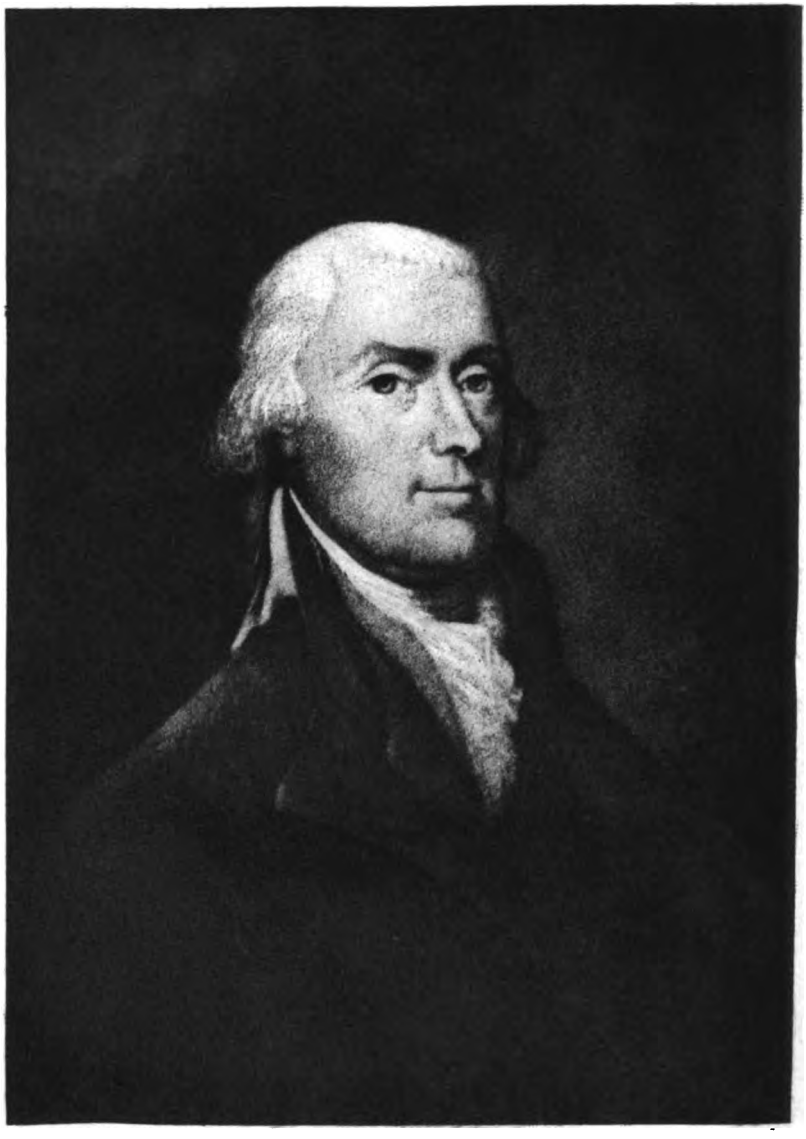

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WITH NUMEROUS ILLUSTRATIONS

A COMPREHENSIVE ANALYTICAL INDEX

The Savage Jefferson
Photogravure from the Original Engraving by Edward Savage.
This rare engraving was made by the artist Edward Savage, and is at present in the possession of the Pennsylvania Historical Society.

ANDREW A. LIPSCOMB, *Chairman Board of Governors*
EDITOR-IN-CHIEF

ALBERT ELLERY BERGH
MANAGING EDITOR

VOL. XVIII.

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OF THE UNITED STATES
WASHINGTON, D. C.
1903

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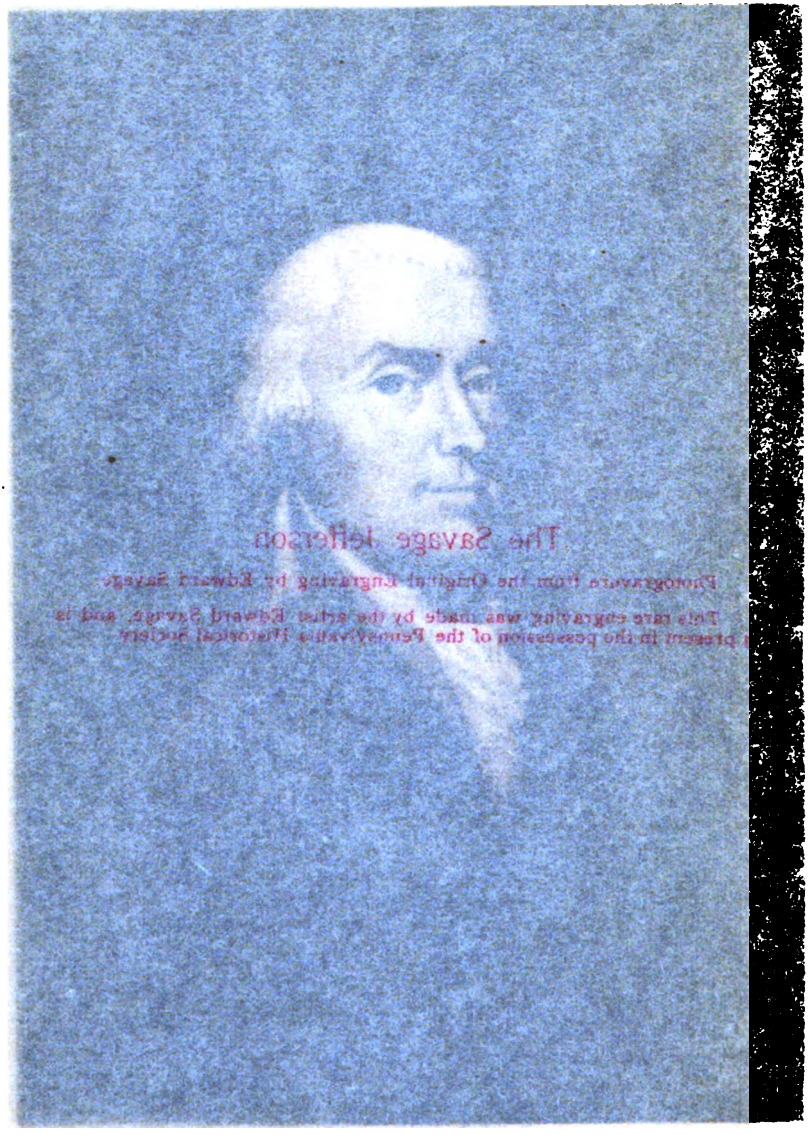

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JEFFERSON'S CONTRIBUTION TO A FREE PRESS.

Perhaps the strongest utterance of faith in the power of a free, honest and liberty-loving press, made by man, was Jefferson's declaration: "Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter."

Was this too high praise of newspapers? History furnishes the answer: it was the press and the printed letters of Payne, Jefferson, Madison, Adams and others, read in every nook and corner of the colonies, which aroused the people of America to secure independence, rather than the thrilling eloquence of the Patrick Henrys, heard by small audiences; and almost every right won for the people since Guttenberg has owed its success to the agitation, argument and exhortation of newspaper and pamphlet. Indeed, but for the invention of the art of printing and its wise use by men like Jefferson, who were devoted to liberty, the flood-tide of freedom would have been centuries later in reaching the shores of the New World. In a letter from Paris on Shays's Rebellion, which shows that

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he was decades ahead of his time, Jefferson gave expression to his high estimate of the value of newspapers as moulders of sound public opinion. He wrote:

"The people are the only censors of their governors; and even their errors will tend to keep them to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs, through the channel of public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide, whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers, and be capable of reading them."

In 1786, to Dr. James Currie, he wrote: "Our liberty depends on the freedom of the press and that cannot be limited without being lost." In 1808, in answer to an address, he wrote: "The liberty of speaking and writing guards our other liberties." To General Washington, in 1792, he wrote: "No government ought to be without censors; and where the press is free, no one ever will."

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Mr. Jefferson, more than any man of his day, appreciated the mighty power of the printed page. Indeed it may be doubted whether any man of any age appreciated so truly its capacity to create public sentiment. He more than any of his famous contemporaries understood that the man imbibes what he reads more than what he hears. But more and better than that: he recognized the priceless value of a free press, just as he felt the necessity of freedom to worship God without restraint. Freedom was to him a religion. He hated anything that hindered man's liberty to think, to write, to speak, to do. His life was largely given to unfettering the mind of man. "I have sworn," he wrote, "upon the altar of God, eternal hostility against every form of tyranny over the mind of man."

The statute for religious liberty, drawn by him and enacted by the Virginia Assembly, was the first step in the line of carrying out the oath he had taken "upon the altar." His whole life shows that he was never "disobedient to the heavenly vision" which inspired that oath. He deemed it one of the three achievements of his life worthy to be carved on the granite shaft, which he directed to be placed above his grave. He acquired his deep-seated hostility to religious bigotry and to church establishment—(nearly always twin brothers)—when he saw dissenting preachers carried to jail for what Patrick Henry called "the crime of preaching the gospel." The sense of outrage that a man should be impris-

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oned for not accepting a creed which he could not believe,—that seemed to his tolerant mind the unpardonable sin—the sin that loomed above all other transgressions. His resentment toward those who would compel men to worship according to dictation from priest or politician was so deep that the pendulum of his mind swung in the opposite direction so far, that his intolerance for church establishment and clerical persecution and religious tyranny—(the trinity of abortions upon Christianity)—was construed into hostility to religion. His letters show, whether he accepted the orthodox creed or not, such a construction does injustice to his reverent admiration of the teachings of Jesus.

Tucker, in his biography of Jefferson, says, "without having either gained a battle, made a speech, or founded a sect, he raised himself from the ranks of private life to the highest civil honors of his country." Jefferson's "Autobiography" negatives the idea that he never made a speech, for, asked by a member of the Annapolis Congress, how he "could sit in silence, hearing so much false reasoning which a word should refute," Mr. Jefferson says: "I observed to him, that to refute was indeed easy, but to silence was impossible; that in measures brought forward by myself, *I took the laboring oar*, as was incumbent on me." But, having no special talent and no taste for public speaking, he leaned upon the press as the medium through which to reach the American people. In truth he had an

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abhorrence of much speaking, and in his "Autobiography," cited the example of Washington and Franklin as illustrating that short speeches accomplish more than long ones, for he says, "I served with General Washington in the Legislature of Virginia, before the Revolution, and during it with Dr. Franklin in Congress. I never heard either of them speak ten minutes at a time, nor to any but the main point, which was to decide the question." He recognized, too, that it was the people, rather than the legislators, whose opinion made permanent statutes and changed constitutions, and his appeal was always to them. They could be reached only through the press, and he found a large portion of the press controlled by those who did not believe in the ability of men to govern themselves,—papers so hostile to popular government, as advocated by Jefferson, that they actually favored the sedition law, a law that destroyed their own real independence. One of the most difficult tasks of Jefferson's life was to secure the establishment of papers that would combat error, and to preserve their freedom from every form of tyranny when they were preaching the doctrine of liberty which he had sworn to uphold. He did this, too, in a day when a free press was regarded in official circles and by most of the world's leaders as sure to destroy stable government. His faith in a free press was so supreme that it did literally "remove mountains."

Before he secured the passage of the statute of

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religious liberty in Virginia, in law it was a crime not to baptize children into the Episcopal Church, to permit Quakers to live in the colony, to fail to pay compulsory tithes to the State Church. Impassioned orators did indeed arouse hostility to the religious "tyranny over the human mind," but it remained for the never-flagging and systematic zeal of Jefferson to secure the repeal of the laws that made such religious slavery possible in the New World.

The Declaration of Independence, written by the inspired pen of Jefferson, was the Magna Charta of American freedom, the corner stone of the temple of free thought, free speech, free press. "It sounded through the land like Roderick's bugle-note in the Highlands; it rallied the wavering and cheered the firm; it removed doubt and fixed a purpose; it was the guide which, leaving by-paths and cross-cuts, got into the plain, straight road and said to the wandering hosts, 'Come on'; it settled the debate, removed the doubt, fixed the resolution; it burned the bridge; it crossed the dead line; it took the route toward that bourne from which no rebel returns save with a rope around his neck; it was a call to nationality, a watch-word, a rallying point; its official statement of ultimate aim and object becoming the pillar of fire which led the people through the darkest night of their dread journey toward the Republic." Jefferson regarded the authorship of that document worthy a place on

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his monument, because it ended civic "tyranny over the human mind."

The University of Virginia, founded to teach and illustrate the right of man to think and to think without "restraint or interference," was the third accomplishment of his life that the sage of Monticello deemed important enough to have carved on his tomb-stone. His devotion to public education was a child of his oath of "eternal hostility against every form of tyranny over the mind of man." Many extracts from his public papers and private letters would illustrate this truth. Three will suffice. To Dupont de Nemours he wrote, "Enlighten the people generally, and tyranny and oppression of body and mind will vanish like evil spirits at the dawn of day." To Madison he wrote, "*Above all things* I hope the education of the common people will be attended to. * * * Educate and inform the whole mass of the people. Enable them to see that it is to their interest to preserve peace and order, and they will preserve them. * * * They are the only sure reliance for the preservation of our liberty." To George White he wrote, "Preach a crusade against ignorance. Establish and improve the law for educating the common people. * * * The tax which is paid for this purpose is not more than the thousandth part of what will be paid to kings, priests, and nobles, who will rise up among us, if we leave the people in ignorance."

These three achievements made straight the path

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for the service he rendered to the free press in America. Indeed they themselves were greatly contributors to the creation of a free press in the early days of the Republic, when population was widely scattered and when the large number of unlettered voters depended more for political direction upon the stump-speech than upon the newspaper. And, as they were the forerunners of an uncensored press, that press in turn guarded and protected civic, religious and intellectual freedom. While Patrick Henry stirred and moved his small audiences, which went forth from his impassioned orations ready to die for liberty, Jefferson, through his writings, was instilling the same vital truths into the minds and hearts of thousands who could never see him or hear his voice.

While Congress was framing the Federal Constitution, Jefferson was minister to France, succeeding Dr. Franklin, America's first great editor. He was distressed when he learned that the new Constitution contained no bill of rights, no guarantee to freedom of religion and the liberty of the press. A biographer of Jefferson says: "The chief grounds of his objections to the Federal Constitution as framed were the omission of a bill of rights, providing, clearly and without the aid of sophism, for the freedom of religion, freedom of the press, security against standing armies, restriction of monopolies, trial by jury, and against all suspension of *habeas corpus*." He would, in all probability,

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have declared against its ratification, but for his profound conviction of the immediate need of a stable government and his faith that the people would add amendments incorporating the suggestions in his letter to Mr. Madison. Instead of opposing its ratification, he did what was better. He advised those who looked to him for counsel that four States should refuse to ratify until the amendments suggested by him were adopted. North Carolina, by a majority of an even hundred, in its Convention at Hillsborough, passed a resolution reciting that it had "thought proper neither to ratify now nor reject the Constitution proposed for the government of the United States," and a bill of rights and certain amendments were presented by Mr. Willie Jones, a devoted disciple of Jefferson. In presenting them Mr. Jones said: "I have, in my proposition, adopted, word for word, the Virginia amendments, with one or two additional ones." The North Carolina amendment on the freedom of the press was in these words: "That the people have a right to freedom of speech, and of writing and publishing their sentiments; that freedom of the pen is one of the greatest bulwarks of liberty and ought not to be violated." There is a tradition in North Carolina that Willie Jones had a letter, never printed, from Thomas Jefferson, advising the course pursued by the majority of the Convention, which he read to the 184 men, man by man, who voted to stay out of the Union until the amend-

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ments drafted by Jefferson were adopted. So great was the influence of Mr. Jefferson in North Carolina —an influence that happily abides to this day—that no argument or persuasion of Iredell or Davie could change a vote after the letter of Mr. Jefferson had been passed from hand to hand.

Jefferson was the inspiration of the action taken by the seven States that demanded an amendment for religious liberty and the freedom of the press. He actually wrote or inspired amendments to the Constitution which North Carolina and Rhode Island insisted upon "previous to ratification." The amendment to the Federal Constitution guaranteeing freedom of the press, which was incorporated in the fundamental charter of the Republic, is in these words:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and petition the government for a redress of grievances."

For this amendment and the healthy agitation that secured it, all men who believe in a free press will ever hold Jefferson in grateful esteem. It was contended that this amendment was wholly unnecessary—"useless surplusage," as one Federalist declared,—but the prophetic eye of the liberty-loving sage of Monticello looked from Paris across the Atlantic and saw that the influences that dis-

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trusted the people would muzzle the press, unless the Constitution forged chains that would deny power "abridging the freedom of speech or of the press." In 1799, evidently having the fear of some sedition law in his mind, Jefferson wrote to Elbridge Gerry, "I am for freedom of the press, and against all violations of the Constitution to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agents."

Mr. Jefferson, when insisting upon the amendment denying the right of Congress to make laws "abridging the freedom of the press," did not see the exact form which hostility to a free press would take, but he knew intuitively it would come in some form if those who distrusted the capacity of the people to govern themselves, obtained control of the Federal Government. He had not long to wait before his prophecy of a war upon a free press, backed by all the power of the national administration and accompanied by usurpations hitherto not dreamed of, was employed to destroy the freedom of the press. Long before the sedition law he had seen the hostility to a free press in the Federalist leaders. Some of the anti-Federalist papers did not even spare Washington, in their attacks upon what they called "the monocrats," and, smarting under their criticisms, the President gave expression to his objection to an unrestrained press. At that time, 1794, writing to Madison, who was then in

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Virginia, Jefferson said: "It is wonderful, indeed, that the President should have permitted himself to be the organ of such an attack on the freedom of discussion, the freedom of writing and publishing."

The Sedition law, employed to strengthen the Adams administration, proved its undoing, thanks to the promptness and the splendid courage of Mr. Jefferson and his associates. He felt that should the people submit to the restrictions of the press in the Sedition law, the hope of free government was lost, and he aroused himself from his quiet life to make a supreme struggle to preserve the liberty for which the American people in the Revolution had ventured all that men hold dear. Federalism seemed firmly entrenched. It had become fashionable to sneer at the rule of the people, to contemn free discussion and equality, and in all official positions there was a feeling that the only good government was such as the few would frame and carry on. The men who went to sleep under Washington's safe rule were rudely awakened by the passage of the Alien and Sedition laws—acts that jeopardized the very life of the young Republic. Foreseeing that the Federalists would seek to stifle the voice of the press, Jefferson wrote to Madison in 1798: "This summer is the season for systematic energies and sacrifices. The engine is the press. Every man must lay his purse and his pen under contribution. As to the former, it is possible I may be obliged to assume something for you. As to the

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latter, let me pray and beseech you to set apart a certain portion of every day to write what may be proper for the public."

Jefferson's arraignment of the law sounded like a bell in the night—as clear as the first shot at Lexington or Moore's Creek. Men who were engrossed in mending their private fortunes and who had not cared for political life, sprung into leadership to resist the encroachments upon the spirit of the Declaration of Independence and the annulment of the very letter of the amendment which Jefferson had forced into the Constitution. To show the purpose and the danger in the Sedition act, it will be necessary to quote only the following portion of section 2:—

"And be it further enacted, that if any shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing, any false, scandalous, and malicious writing or writings against the government of the United States, or either House of the Congress of the United States with an intent to defame the said government or either House of the said Congress, or the President, or to bring them or either of them into contempt or disrepute, or to excite against them, or either or any of them the hatred of the good people of the United States, etc., then such persons, being thereof convicted before any court of the

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United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years."

That law had hardly been promulgated before Mr. Jefferson pronounced it unconstitutional and commenced the most far-reaching and vigorous onslaught upon it. He not only aroused the people of America, but he brought to bear the power of enlightened public sentiment in England and on the Continent to produce a world-wide condemnation so strong that, added to the indignant protests of their constituents, the law-makers would be forced to repeal it. To John Taylor in 1798 he wrote: "I enclose you a column, cut out of a London paper to show you that the English, though charmed with our making their enemies our enemies, yet blush and weep over our Sedition law."

The first and the only national campaign upon the issue of appealing to the people to protect the freedom of the press, guaranteed in the Federal Constitution, was inaugurated by Mr. Jefferson against the Alien and Sedition laws. He not only inspired the spirit of the criticisms upon these dangerous laws in the newspapers, but he wrote the famous Kentucky Resolutions that for years engrossed the public mind to the exclusion of all other topics. In the Kentucky Resolutions, upon the question of the attempt to shackle the press by the Federal Government, Mr. Jefferson wrote:—

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"It is true as a general principle, and is also expressly declared by one of the amendments to the Constitution, that the 'powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people; and * * * no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States or the people.' * * * There was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech, and of the press, may be abridged without lessening their useful freedom and how far those abuses which cannot be separated from their use should be tolerated, rather than the use be destroyed. And thus also they guarded against all abridgment by the United States of the freedom of religious opinions and exercises and retained to themselves the right of protecting the same as this State (Kentucky), by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference. * * * In addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares, that "Congress shall make no law respecting an establishment of religion,

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or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding in the same sentence and under the same words, the freedom of religion, of speech and of the press, insomuch, that whatever violates either, throws down the sanctuary which covers the others, and that libels, falsehoods, and defamation, equally with heresy and false religion, are withheld from the cognizance of Federal tribunals. * * * Therefore, the act of Congress of the United States passed on the 14th day of July, 1798, intitulated "An Act in addition to the act intitulated 'An Act for the punishment of certain crimes against the United States'," which does abridge the freedom of the press, is not law, but is altogether void, and of no force." * * * "If these acts (the Alien and Sedition acts) should stand, these conclusions would flow from them: That the General Government may place any act that they think proper on the list of crimes and punish it themselves whether enumerated or not enumerated by the Constitution as cognizable to the President, or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicion may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: that a very numerous and exact description of the inhabitants of these States being by his precedent reduced to outlaws, to the absolute dominion of one man, and the barrier of the Constitution thus swept away

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from us all, no rampart now remains against the passions and the powers of the majority in Congress to protect from a like exportation, or other more grievous punishment, the minority of the same body, the legislatures, judges, governors, and councellors of the States, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the States and people, or who for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the President, or to be thought dangerous to his or their election, or other interests, public or personal: that the friendless alien has indeed been selected as the safest subject of a first experiment but the citizen will soon follow or rather, has already followed, for already has a Sedition Act marked him as his prey: that these and successive acts of the same character, unless arrested at the threshold, necessarily drive these States into revolution and blood, and will furnish new calumnies against republican government, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron."

The Virginia Resolutions, drawn by Mr. Madison and approved by Mr. Jefferson, condemned the Alien and Sedition laws, and, with reference to the attack on the freedom of the press, employed these words: "exercises in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the

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amendments thereto—a power which, more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed *the only effectual guardian of every other right.*"

Jefferson, seeing the coming of the Sedition law before it was enacted, was gathering ammunition with which to attack it before it was on the statute books. Writing to Mr. Madison April 26th, 1798, he prophesied thus: "One of the war party, in a fit of passion, declared sometime ago they would pass a citizen bill, an alien bill, and a sedition bill; accordingly, some days ago, Coit laid a motion on the table of the House of Representatives for modifying the citizen law. Their threats point at Gallatin, and it is believed they will endeavor to reach him by this bill. Yesterday Mr. Hillhouse laid on the table of the Senate a motion for giving power to send away suspected aliens. This is understood to be meant for Volney and Collot. But it will not stop there when it gets in a course for execution. There is now only wanting, to accomplish the whole declaration before mentioned, a sedition bill, which we shall certainly soon see proposed." In November of the same year he wrote to John Taylor: "For the present, I should be for resolving the Alien and Sedition laws to be against the Constitution and merely void, and for addressing the other States

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to obtain similar declarations: and I would not do anything at this moment which should commit us further, but reserve ourselves to shape our future measures, or no measures, by the events which may happen."

In the same year he wrote to Madison of the threat of an alien and sedition bill, and of the sedition bill said, "The object of that, is the suppression of the Whig presses, Bache's has been particularly named. That paper and also Carey's totter for want of subscriptions. We would really exert ourselves to procure them, for if these papers fail, republicanism will be entirely brow-beaten."

In June, 1799, seeing the fulfillment of his prophecy he commenced the agitation for the repeal of the law that abridged the freedom of speech and wrote to Madison as follows: "They have brought into the lower House a sedition bill, which, among other enormities, undertakes to make printing certain matters criminal, though one of the amendments to the Constitution has so expressly taken religion, printing presses, etc., out of their coercion. Indeed this bill, and the alien bill are both so palpably in the teeth of the Constitution as to show they mean to pay no respect to it."

He followed closely every act and speech attending the passage of this objectionable law and all subsequent debates on it, and gave this pen-picture in a letter to Mr. Madison in February, 1799, of a scene in the House of Representatives: "Yesterday

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witnessed a scandalous scene in the House of Representatives. It was the day for taking up the report of their committee against the Alien and Sedition laws, etc. They (the Federalists) held a caucus and determined that a word should not be spoken on their side, in answer to anything that should be said on the other. Gallatin took up the Alien, and Nicholas the Sedition law; but after a little while of common silence, they began to enter into loud conversations, laugh, cough, etc., so that the last hour of these gentlemen's speaking they must have had the lungs of a vendue master to have been heard. Livingston, however, attempted to speak. But after a few sentences, the Speaker called him to order, and told him what he was saying was not to the question. It was impossible to proceed. The question was carried in favor of the report, 52 to 48; the real strength of the two parties is 56 to 50."

Again, to Madison in the same year, he wrote, "Petitions and remonstrances against the Alien and Sedition laws are coming from different parts of New York, New Jersey, and Pennsylvania. * * * I am in hopes Virginia will stand so countenanced by those States as to repress the wishes of the government to coerce her, which they might venture on if they supposed she would be left alone. Firmness on our part, but a passive firmness, is the true course. Anything rash or threatening might check the favorable dispositions of these Middle States,

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and rally them again around the measures which are ruining us."

With the instinct of the political seer he looks into the future and sees that if the opponents of that law content themselves with firm and orderly protests, the attempt to abridge the freedom of the press will destroy the Federal party. Writing to Edward Pendleton in February, 1799, he said, "In Pennsylvania, we fear that the ill-designing may produce insurrection (against the Alien and Sedition Laws). Nothing could be so fatal. Anything like force would check the progress of the public opinion, and rally them around the government. This is not the kind of opposition the American people will permit. But keep away all show of force, and they will bear down the evil propensities of the government, by the constitutional means of election and petition." In the same month he wrote thus to Archibald Stuart: "Several parts of this State (Pennsylvania) are so violent that we fear an insurrection. This will be brought about by some if they can. It is the only thing we have to fear. The appearance of an attack of force against the government would check the present current of the Middle States, and rally them around the government; whereas if suffered to go on it will pass on to a reformation of abuses."

He believed that the Alien and Sedition Law was but the first step in converting the republic into a virtual monarchy, for in 1799 he wrote to S. T.

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Mason: "I consider these laws as merely an experiment on the American mind, to see how far it will bear an avowed violation of the Constitution. If this goes down, we shall immediately see attempted another act of Congress, declaring that the President shall continue in office during life, reserving to another occasion the transfer of the succession to the heirs, and the establishment of the Senate for life. At least, this may be the aim of the Oliverians, while Monk and the Cavaliers (who are perhaps the strongest), may be playing their game for the restoration of his most gracious Majesty, George III. That these things are in contemplation, I have no doubt; nor can I be confident of their failure, after the dupery of which our countrymen have shown themselves susceptible."

When Jefferson was elected to the Presidency the Alien and Sedition laws were speedily repealed and all persons convicted or awaiting trial under them were at once pardoned or released. Referring to his actions, with reference to persons convicted under the Sedition law, he wrote to Mrs. John Adams in July, 1804, "I discharged every person under punishment or prosecution under the Sedition law, because I considered and now consider that law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image; and that it was as much my duty to arrest its execution in every stage, as it would have been to have rescued from the fiery furnace

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those who should have been cast into it for refusing to worship the image. It was accordingly done in every instance, without asking what the offenders had done, or against whom they had offended, but whether the pains they were suffering were inflicted under the pretended sedition law."

During his administration, some of Mr. Jefferson's over-zealous friends in Connecticut had instituted a prosecution against a clergyman in that State for a libel against the President from the pulpit. As soon as he was informed of it, Mr. Jefferson wrote to Mr. Granger, the Postmaster-General, then in Connecticut, that "he had laid it down as a law to himself, to take no notice of the thousand calumnies issued against him, but to trust his character to his own conduct and the candor of his fellow-citizens, that he had no reason to be dissatisfied with that course, and was unwilling it should be broken through." He therefore desired him to request the district attorney to dismiss the prosecution. Having afterwards heard of subpœnas for witnesses, he made a peremptory request to the same effect. The district attorney did dismiss the prosecution, and accompanied the dismission with the avowal that the court had no jurisdiction over libels. There were other prosecutions, of which he had no previous knowledge, but they were all dismissed at the same time. The clergyman afterwards, in a letter to Mr. Granger, disavowed all personal ill will to Mr. Jefferson, and solemnly

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declared he had not uttered the words charged. These prosecutions were dismissed, as Tucker says in his "Life of Jefferson," on the same grounds as he had himself acted on in the case of Duane, Callender, and others, in considering the Sedition law unconstitutional.

In a letter to Mr. Granger in 1814, Mr. Jefferson wrote: "With respect to the dismission of the prosecutions for sedition in Connecticut, it is well known to have been a tenet of the republican portion of our fellow-citizens, that the Sedition law was contrary to the Constitution, and, therefore, void. On this ground I considered it as a nullity whenever I met it in the course of my duties; and on this ground I directed *nolle prosequis* in all the prosecutions which had been instituted under it; and, as far as the public sentiment can be inferred from the occurrences of the day, we must say that this opinion had the sanction of the nation. The prosecutions, therefore, which were afterwards instituted in Connecticut, of which two were against printers, two against preachers, and one against a judge, were too inconsistent with this principle to be permitted to go on. We were bound to administer to others the same measure of law, not which they had meted to us, but we to ourselves, and to extend to all equally the protection of the same constitutional principles. These prosecutions, too, were chiefly for charges against myself, and I had from the beginning laid it down as a rule to notice nothing

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of the kind. I believe that the long course of services in which I had acted on the public stage, and under the eye of my fellow-citizens, furnished better evidence to them of my character and principles, than the angry invectives of adverse partisans in whose eyes the very acts most approved by the majority were subjects of the greatest demerit and censure. These prosecutions against them, therefore, were to be dismissed as a matter of duty."

Why did Mr. Jefferson maintain silence when unjustly accused and why did he prevent the prosecution of men who had slandered him? The answer is found in his own words. He profoundly believed that, while a free press would often wound and temporarily injure, ten thousand times more evil would follow censorship or prosecutions than to trust to the innate good sense of the public to separate the true from the false, and, before Emerson put it into an axiom, Jefferson was confident of this truth: "A man passes for what he is worth. Very idle is all curiosity concerning other people's estimate of us, and idle is all fear of remaining unknown. If a man know that he can do anything—that he can do it better than any one else—he has a pledge of the acknowledgment of that fact by all persons. The world is full of judgment days, and into every assembly that a man enters, in every action that he attempts, he is gauged and stamped." His conviction upon that point was put into an epigram in a letter to Thomas Seymore in February,

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1807. He wrote, "The press is impotent when it abandons itself to falsehood." That truth he more fully emphasized and elaborated in a long letter to Mr. Seymore, from which the following extracts are taken: "Conscious that there was not a truth on earth which I feared should be known, I have lent myself willingly as the subject of a great experiment, which was to prove that an administration, conducting itself with integrity and common understanding, cannot be battered down, even by the falsehoods of a licentious press, and consequently still less by the press, as restrained within legal and wholesome limits of truth. This experiment was wanting for the world to demonstrate the falsehood of the pretext that freedom of the press is incompatible with orderly government. I have never, therefore, even contradicted the thousands of calumnies so industriously propagated against myself. But the fact being once established, that the press is impotent when it abandons itself to falsehood, I leave to others to restore it to its strength, by recalling it within the pale of truth. Within that, it is a noble institution, equally the friend of science and of civil liberty."

Though Matthew Lyon, soldier, patriot, printer was put in jail in Connecticut because he accused Mr. Adams of avarice, vanity and childish love of pomp, the result of the prosecution of Mr. Lyon proved the wisdom of Mr. Jefferson's view of "getting along without public prosecutions for libels." The

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Connecticut people expressed their disapproval of the prosecution of Lyons by re-electing him to Congress while he lay in jail. To Levi Lincoln, in 1802, after he had liberated the men prosecuted under the sedition law, Mr. Jefferson wrote, "I would wish much to see the experiment tried of getting along without public prosecutions for libels. I believe we can do it. Patience and well doing, instead of punishment, if it can be found sufficiently efficacious, would be a happy change in the instruments of government."

The best place to find Jefferson's mature and real views are in his acts—the conspicuous part he bore in incorporating the guarantee of freedom of the press in State constitutions; the prominent place he gave to this in every constitution or bill of rights he suggested or drafted; his forcing into the Federal Constitution the provision that no laws should be passed abridging the liberty of the press; his sincere, courageous and effective fight against the unconstitutional and wicked sedition law; his recommendations in State papers; his inaugural addresses and the general trend of his writings and actions.

In his first inaugural address, Mr. Jefferson was on the mountain top of faith in the people and devotion to the freedom of the press, and his convictions then may be summed up in this sentence in a letter to Charles Yancey: "*Where the press is free* and every man able to read, *all is safe.*" In

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his first inaugural address he said: "Freedom of the press I deem (one of the) essential principles of our government and consequently (one) which ought to shape its administration." In the same address, among the essential principles of government he enumerated "the diffusion of information, and arraignment of all abuses at the bar of public reason; freedom of religion, freedom of the press, and freedom of the person, under protection of the *habeas corpus;* and trial by juries impartially selected."

Between his first inaugural address and the second Mr. Jefferson and his administration had been the recipient of a steady stream of misrepresentation and abuse from the press hostile to his principles and those of the party he had founded. In his second inaugural he felt called upon to refer to the studied and continued attacks, but instead of recommending some other measure of suppression, or the re-enactment of the Sedition law, he used the incident to enforce his abiding faith in his creed: "The liberty of speaking and writing guards our other liberties." Printing has been said to be "the art preservative of arts." It is equally true that the free press is the preservative of all freedom.

In his second inaugural address, Mr. Jefferson, while commenting with severity upon the lengths to which a licentious press had gone in misrepresenting his administration, used the abuse of their liberty and its failure to accomplish its purpose to

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injure, as the perfect and complete vindication of the position he had always maintained. He said:

"During this course of administration, and in order to disturb it, the artillery of the press has been levelled against us, charged with whatsoever its licentiousness could devise or dare. These abuses of an institution so important to freedom and science are deeply to be regretted, inasmuch as they tend to lessen its usefulness and to sap its safety. They might, indeed, have been corrected by the wholesome punishments reserved and provided by the laws of the several States against falsehood and defamation; but public duties more urgent press on the time of public servants, and the offenders have therefore been left to find their punishment in the public indignation.

"Nor was it uninteresting to the world, that an experiment should be fairly and fully made, whether freedom of discussion, unaided by power, is not sufficient for the propagation and protection of truth? Whether a government, conducting itself in the true spirit of its constitution, with zeal and purity, and doing no act which it would be unwilling the whole world should witness, can be written down by falsehood and defamation? The experiment has been tried. You have witnessed the scene. Our fellow-citizens have looked on cool and collected. They saw the latent source from which these outrages proceeded. They gathered around their public functionaries; and, when the Constitu-

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tion called them to the decision by suffrage, they pronounced their verdict, honorable to those who had served them, and consolatory to the friend of man, who believes he may be intrusted with his own affairs.

"No inference is here intended that the laws provided by the State against false and defamatory publications should not be enforced. He who has time, renders a service to public morals and public tranquillity in reforming these abuses by the salutary coercions of the law. But the experiment is noted to prove that, since truth and reason have maintained their ground against false opinions, in league with false facts, the press, confined to truth, needs no other legal restraint. The public judgment will correct false reasonings and opinions, on a full hearing of all parties; and no other definite line can be drawn between the inestimable liberty of the press and its demoralizing licentiousness. If there be still improprieties which this rule would not restrain, its supplement must be sought in the censorship of public opinion."

But, though he never wavered in his faith in the blessings of a free press, Mr. Jefferson was so hunted by the hyenas of a malignant and scurrilous personal journalism, that he often gave expression to his sense of outrage at the misrepresentations of his character and views, in language that has been twisted into the idea that he came, in his latter years, to doubt his early belief that the press should

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be unrestrained. Such expressions were always uttered or written hastily while he was smarting under what he knew to be undeserved criticism and abuse, as will be seen by extracts from private letters written by him. These letters were not written for publication. In them he was merely thinking aloud. They convey only a passing wave of indignation that often causes a man to speak vehemently to his friend of a sense of injustice. It is therefore not just to accept such expressions as his deliberate and well-considered convictions.

If any public man ever had the right to rail at the press, that man was Mr. Jefferson, who was abused and villified by a portion of it from the day he secured the repeal of the law of primogeniture in Virginia almost to the day of his death. Writing of his fight against Mr. Pendleton's compromise, proposing to give the elder son a double portion, in his "Autobiography," Mr. Jefferson thus gives the substance of his reply: "I observed that if the eldest son could eat twice as much, or do double work, it might be a natural evidence of his right to a double portion; but being on a par in his powers and wants with his brothers and sisters, he should be on a par also in the partition of the patrimony; and such was the decision of the other members." In taking that stand, then almost revolutionary, Mr. Jefferson brought down upon his head, then and ever afterwards, the wrath of two classes: First, those who stand for all forms of special privi-

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lege—as primogeniture, church establishment, protection to particular interests, belief in inherited monarchies, a censorship of the press, and the like; second, those, who, by the natural process of inertia, oppose all innovations under the guise of conservatism. Jefferson was inherently an innovator. No tradition, no custom, no practice, no belief, that did not appeal to his judgment and reason had any sacredness to him. Of all his great measures, when he first unfolded them, it was as true as of the one of which he wrote in a letter from France, "The leap I then proposed was too long, as yet, for the mass of our citizens." But he lived to see the country approve them all before he died. A man who shows contempt for outworn creeds and beliefs, is as sure to cut across the grain of the large and reactionary class who cling tenaciously to them as he is to arouse the hostility of those enjoyers of special privilege who see their perquisites and bounties taken from them by a law of equality. To his defiance of these two classes, and to the misconception of the man by those misled by them, Mr. Jefferson was indebted for the storm of abuse that beat upon his head from the day that the supporters of primogeniture and the fox-hunting clergy were provoked to resentment by Mr. Jefferson's broad-minded and liberal measures.

It is not surprising that he gave vent to his indignation when viciously slandered. The surprise is that his indignation did not drive him to the point

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of favoring censorship of the press or severe punishment of editors who wrote false things about him. Though extremely sensitive to criticism and sometimes wounded at the sorest point by the printed libels, he never faltered in his creed that a free press was "the only tocsin of a nation." To Edward Rutledge, in 1796, he wrote, "You have seen my name lately tacked to so much of eulogy and of abuse that I dare say you hardly thought that it meant your old acquaintance of '76. In truth, I did not know myself under the pens of either friends or foes. It is unfortunate for our peace that unmerited abuse wounds, while unmerited praise has not the power to heal. These are hard wages for the services of all the active and healthy years of one's life." To Samuel Smith, in 1798, he wrote: "Were I to undertake to answer the calumnies of the newspapers, it would be more than all my own time, and that of twenty aids could effect. For while I should be answering one, twenty new ones would be invented." To John Adams, in 1817, he wrote: "It is fortunate for those in public trust that posterity will judge them by their works and not by the malignant vituperations and invectives of the Pickerings and Gardners of their age." To M. Pictet he wrote: "The abuses of the freedom of the press here have been carried to a length never before known or borne by any civilized nation. * * * Our newspapers, for the most part, present only the caricatures of disaffected minds." To James Mon-

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roe, in 1798, he wrote: "It is really a most afflicting consideration that it is impossible for a man to act in any office for the public without encountering a persecution which even his retirement will not withdraw from him."

The most severe arraignment of the press into which his resentment to calumny upon himself and his administration ever led him was toward the close of his second term. Beset with foreign and domestic complications, harassed by divisions in his party in Congress, he was sorely wounded by the virulent criticisms of the Federalist or anti-republican press. He felt that he had spent himself for his country, without selfish aims, and he craved, as he was going into retirement, after half a century devoted to affairs of state, the good will and appreciation of his fellow countrymen. Instead of giving him assurances that his contribution to the life, safety and guidance of the young Republic was appreciated, a large part of the press was making his slightest act the fresh occasion for slander and detraction. It was at that time, in 1807, that he wrote the following letter from the national capitol to George Norvell, in response to a request as to how to conduct a newspaper, in which he gave vent to his feeling of resentment: "To your request of my opinion of the manner in which a newspaper should be conducted, so as to be most useful, I should answer, 'by restraining it to true facts and sound principles only.' Yet I fear such a paper would

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find few subscribers. It is a melancholy truth, that a suppression of the press could not more completely deprive the nation of its benefits, than is done by its abandoned prostitution to falsehood. Nothing can now be believed which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle. The real extent of this state of misinformation is known only to those who are in situations to confront facts within their knowledge with the lies of the day. I really look with commiseration over the great body of my fellow-citizens, who, reading newspapers, live and die in the belief, that they have known something of what has been passing in the world in their time; whereas the accounts they have read in newspapers are just as true a history of any other period of the world as of the present, except that the real names of the day are affixed to their fables. General facts may indeed be collected from them, such as that Europe is now at war, that Bonaparte has been a successful warrior, that he has subjected a great portion of Europe to his will, etc., etc., but no details can be relied on. I will add, that the man who never looks into a newspaper is better informed than he who reads them; inasmuch as he who knows nothing is nearer to truth than he whose mind is filled with falsehoods and errors. He who reads nothing will still learn the great facts, and the details are false.

"Perhaps an editor might begin a reformation in

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some such way as this: Divide his paper into four chapters, heading the 1st, Truths. 2d, Probabilities. 3d, Possibilities. 4th, Lies. The first chapter would be very short, as it would contain little more than authentic papers, and information from such sources, as the editor would be willing to risk his own reputation for their truth. The second would contain what, from a mature consideration of all circumstances, his judgment should conclude to be probably true. This, however, should rather contain too little than too much. The third and fourth should be professedly for those readers who would rather have lies for their money than the blank paper they would occupy.

"Such an editor, too, would have to set his face against the demoralizing practice of feeding the public mind habitually on slander, and the depravity of taste which this nauseous aliment induces. Defamation is becoming a necessary of life; insomuch, that a dish of tea in the morning or evening cannot be digested without this stimulant. Even those who do not believe these abominations still read them with complaisance to their auditors, and instead of the abhorrence and indignation which should fill a virtuous mind, betray a secret pleasure in the possibility that some may believe them, though they do not themselves. It seems to escape them that it is not he who prints, but he who pays for printing a slander, who is its real author.

"These thoughts on the subject of your letter

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are hazarded at your request. Repeated instances of the publication of what has not been intended for the public eye, and the malignity with which political enemies torture every sentence from me into meanings imagined by their own wickedness only, justify my expressing a solicitude that this hasty communication may in nowise be permitted to find its way into the public papers. Not fearing these political bull-dogs, I yet avoid putting myself in the way of being baited by them, and do not wish to volunteer away that portion of tranquillity, which a firm execution of my duties will permit me to enjoy."

Mr. Jefferson never but once replied to his critics in the press—and that was when accused of robbing a widow and her children while acting as executor. He did not then write his answer to a paper, but to a friend, and its calmness and fullness of statement completely destroyed the slander and discredited the slanderer. The reasons for his silence under great provocation are given by himself in letters to friends. To Wm. Duane, in 1807, he wrote: "Slander I have thought it best to leave to the scourge of public opinion." To Martin Van Buren, in 1824, he wrote, "My rule of life has been never to harass the public with fendings and provings of personal slanders. * * * I have ever trusted to the justice and consideration of my fellow-citizens, and have no reason to repent it, or change my course." To Dr. George Logan, in 1816, he wrote,

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"As to federal slanders I never wished them to be answered but by the tenor of my life, half a century of which has been on a theatre at which the public have been spectators, and competent judges as to merit. Their appreciation has taught a lesson, useful to the world, that the man who fears no truths has nothing to fear from lies. I should have fancied myself half guilty had I condescended to put pen to paper in refutation of their falsehoods or drawn to them respect by any notice from myself."

Mr. Jefferson's party founded a newspaper—Freneau's Gazette,—edited by a clerk in his department, while Jefferson was Secretary of State in Washington's cabinet. It was established to counteract the teachings of Fenno's Gazette, chiefly edited by Hamilton, which preached the doctrines held by the Federalist party. The President thought that Jefferson should dismiss from the public service Mr. Freneau because he was quite free in criticising the administration of the Treasury Department under Hamilton. Though Jefferson stood by Freneau, manifesting a courageous and practical exhibition of his belief that every man should be allowed to speak and write what he pleased, and refused to accede to Washington's request to dismiss him, he did not write for Freneau's paper, though Hamilton, supposing Jefferson to be the author of the attacks upon his policy in that paper, assailed Jefferson most severely. To these attacks upon him, as to all others, he made no reply and gave no out-

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ward sign that he had read them. To Edmund Randolph, prior to that time, Jefferson had written, "I have preserved through life a resolution, set in a very early part of it, never to write in a public paper without subscribing my name, and to engage openly an adversary who does not let himself be seen, is staking all against nothing."

In a letter, September 9, 1792, to General Washington, who had told Jefferson that articles in Freneau's paper "tended to produce a separation in the Union," and attacking him indirectly, though thinking him "fool enough to swallow the little sugar plums here and there thrown out to him," Jefferson defended himself for giving Freneau, the poet, an appointment in his office. He declared that his expectations looked only to the chastisement of the aristocratical and monarchical writers, and not to any criticism on the proceedings of the government: that Hamilton could see no motive for any appointment but that of making a convenient partisan, but he knew that talents and science were with him a sufficient recommendation. Freneau, as a man of genius, found a preference with him, and he added: "Freneau and Fenno are rivals for the public favors; the one courts them by flattery, the other by censure; and I believe it will be admitted that one has been as servile as the other severe. But is not the dignity, and even decency of government committed, when one of its ministers enlists himself as an anonymous writer

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or paragraphist, for either the one or the other of them? And where the press is free, no one ever will. If virtuous, he need not fear the operation of attack and defence. Nature has given to man no other means of sifting the truth, either in religion, law or politics. I think it is as honorable to the government neither to know nor to notice sycophants or censure, as it would be undignified and criminal to pamper the former and persecute the latter."

Mr. Jefferson was the more severely abused for giving a position in the State Department to Mr. Freneau, probably because the power exerted by his paper was the cause of the loss of popular favor by the Federalists in the administration. Hamilton's defenders dared not admit that it was because Freneau's paper was destroying their idol's hold upon the confidence of the country, though that was the motive that prompted the criticisms of Mr. Jefferson for retaining the editor in the public service. Therefore, the Federalists declared the retention of Freneau to be a want of courtesy to his associates in the administration and a breach of moral duty. To that criticism George Tucker in his "Life of Jefferson" makes this conclusive answer:

"But against no aspersion of his enemies is his vindication more easy. On the public measures thus condemned, his opinions were known, in the cabinet and out of it, to be diametrically opposite

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to those of Mr. Hamilton, their chief adviser; and while the press was made to assail him, his opinions, and motives, he surely had a right to use the same weapon in their defence. But further: according to his views of the interests of the country, and of the object and tendency of Hamilton's policy, it was not only his right, but his duty, to endeavor to operate upon public opinion, which was to be the final arbiter between them. In availing himself of this auxiliary, he seems never to have transcended the bounds of legitimate warfare. He practiced no concealment either of his principles or of his patronage of Freneau; he betrayed no confidence; he countenanced no doctrines in that paper which he did not maintain everywhere else. It does not appear that he ever wrote for the paper, for that did not accord with his notions either of prudence or propriety; but had he done so, he might have defended himself by the example of his political antagonist. It must also be recollected that the political principles and measures of Hamilton and his adherents were the chief objects of attack in the National Gazette, while the President, who was never confounded with them was always treated with decorum and respect. In every respect, then, the charge appears to be frivolous or unfounded.

"Mr. Jefferson had yet a further ground of vindication, had he needed it, though he never deigned to make use of it; and this was the fact, that the National Gazette was not set up by him, but by

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Mr. Madison and General Henry Lee, then Governor of Virginia, and afterwards so warm a Federal partisan, for the double purpose of assisting Freneau, who had been their fellow collegian at Princeton, and of affording the public an opportunity of hearing the arguments of both the parties that then divided the country."

Though he did not personally write for the press he had well-matured opinions as to the duty of a political editor. He gave expression to his opinion in the following letter, written in 1811 from Monticello to William Duane: "I think an editor should be independent, that is, of personal influence, and not be moved from his opinions on the mere authority of an individual. But, with respect to the general opinion of the political section with which he habitually accords, his duty seems very like that of a member of Congress. Some of these, indeed, think that independence requires them to follow always their own opinion, without respect for that of others. This has never been my opinion, nor my practice, when I have been of that or any other body, differing on a political question from those whom I knew to be of the same political principles with myself, and with whom I generally thought and acted. A consciousness of the fallibility of the human mind and of my own in particular, with a respect for the accumulated judgment of my friends, has induced me to suspect erroneous impressions on myself, to suppose my own opinion wrong,

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and to act with them on theirs. The want of this spirit of compromise, or of self-distrust, proudly but falsely, called independence, is what gives the Federalists victories which they could never obtain if these brethren could learn to respect the opinion of their friends more than their enemies, and prevent many able and learned men from doing all the good they otherwise might do." Of Duane he wrote to Mr. Wirt: "I believe Duane to be a very honorable man and sincerely republican; but his passions are stronger than his prudence, and his personal as well as general antipathies render him very intolerant. These traits lead him astray and require his readers, even those who value him for his steady support of the republican cause, to be on their guard against his occasional observations."

The critics of Mr. Jefferson have been wont to attribute what, in his lifetime, they termed his over-trust in the capacity of the people for self-government, to the views he imbibed in France. No doubt the spectacle of a people in a country where "every man must be a hammer or an anvil" at a time when the love of liberty and the rights of man inspired the best portion of the people of that country to demand a larger voice in governing themselves, had a permanent influence upon his life and views. But he secured the repeal of the law of primogeniture and church establishment, and drafted provisions for future constitutions, insuring the freedom to write and speak without

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restraint, before he ever walked the streets of Paris. It was Jefferson instructing Frenchmen in the necessity for a free press as the mudsill of national liberty rather than learning from them the love of a free press that was a ruling passion of his life.

While in Paris, Jefferson prepared a charter of rights for the French people, the ninth section being as follows: "Printers shall be liable to legal prosecution for printing and publishing false facts, injurious to the party prosecuting; but they shall be under no other restraint."

They were in far too liberal a spirit of concession for the government party and nothing came of his wise recommendation. In 1802, writing to Thomas Cowper, he declared, "The press, the only tocsin of a nation, is completely silenced." Among the abuses in France that brought on the Revolution he named "the shackles on the freedom of conscience, of thought and of speech; on the freedom of the press by censure."

In M. Necker's report to the King, it was suggested by Mr. Jefferson's advice, "How far the press might be made free." He noted that the restraint on the freedom of the press was one of the chief complaints of the government in the French Revolution. In his "Autobiography" Jefferson says: "Nor should we wonder at * * * (the) pressure (for a fixed Constitution in 1788–9) when we consider the monstrous abuses of power under which * * * (the French) people were ground to

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powder; when we pass in review the shackles * * * on the freedom of the press by the censure."

In spite of Mr. Jefferson's strong predilection for popular government, and his belief in its practicability, he still doubted, as he doubted when he was in Europe, as he says in a letter to his friend La Fayette, in November, 1823, whether the state of society in Europe could bear a republican government. He remarks, "an hereditary chief, strictly limited, the right of war vested in the legislative body, a rigid economy of the public contributions, and absolute interdiction of all useless expenses, will go far towards keeping the government honest and unoppressive. *But the only security of all is a free press.* The force of public opinion cannot be resisted when permitted freely to be expressed. The agitations it produces must be submitted to. It keeps the waters pure."

In the same year, writing to M. Coray, he said: "This formidable censor of the public functionaries, (press) by arraigning them at the tribunal of public opinion, produces reform peaceably, which must otherwise be done by revolution." To M. Coray, in Paris, in 1823, he wrote: "The press is the best instrument for enlightening the mind of man, and improving him as a rational, moral, and social being."

In his retirement, when the French dynasty was crushing popular liberty, Mr. Jefferson reminded La Fayette of the proposition he had made at the

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early stage of the revolution to secure a compact with the King, the benefit of *habeas corpus*, jury trial, freedom of the press, and religion, and a national legislature which he would then have yielded, and to let them work out the amelioration of the condition of the people, until they should have been rendered capable of more.

In 1793, to De Viar and De Jandenes, he wrote: "Your residence in the United States has given you an opportunity of becoming acquainted with the extreme freedom of the press in these States. Considering its great importance to public liberty, and the difficulty of subjecting it to very precise rules, the laws have thought it less mischievous to give greater scope to its freedom than to the restraint of it."

Thus it is seen that, if the people of France at that time had learned the lesson of liberty under law as well as it had been learned in America's school of experience, Mr. Jefferson's suggestions would have been incorporated into the law of the land, and some of the horrors of the French Revolution might have been prevented.

Mr. Jefferson s contribution to the free press was not bounded by geographical lines or limited by any period of time. It was for all countries and all ages. In his life, whether laboring in the land of his birth to obtain, safeguard and make permanent the freedom of the press, or seeking to aid the people of France, groping through the darkness with only

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the dim gleam of a censored press, to secure the "liberty of speaking and writing which guards all other liberties," he was always animated by faith in the capacity of man to control his own affairs, and by his oath of "eternal hostility against every form of tyranny over the human mind." His influence —inspiring, powerful, salutary in his day—did not die when his mortal body was laid to rest on the sloping hillside of Monticello, hard by the home where his pen had written the appeals, the resolutions, the statutes that gave America its untrammelled press.

Jefferson's services for liberty are immortal. Wherever men look out of darkened windows of despotic governments they are cheered by the light of Jefferson's Declaration, which penetrates and illumines the deepest cell of civic tyranny. Wherever, in any decade of the world's history—yesterday, to-day, to-morrow—the pen is subjected to censorship, the words and deeds of Jefferson are the bow of promise set in the heavens.

As the years shall pass,

> "And the thoughts of men are widen'd with the process of the suns,"

and, one by one the nations that sit in darkness come into the glorious light of freedom—freedom of conscience, freedom of speech, freedom to think and write and print—the majestic figure of Jefferson will loom up as the inspiring spirit who first breathed

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into the printing press—(theretofore the unresponsive instrument to further the decrees of kings and bind the conscience and thoughts of men)—the breath of life, and made it responsive, sentient, virile, free. In this new life that dates from Jefferson, this free press has become the champion of the oppressed, the teacher of the young, the guide of the mature, the comfort of the aged, and the mightiest power for good that blesses and shall ever bless mankind.

Josephus Daniels

RALEIGH, N. C., April 13, 1904.

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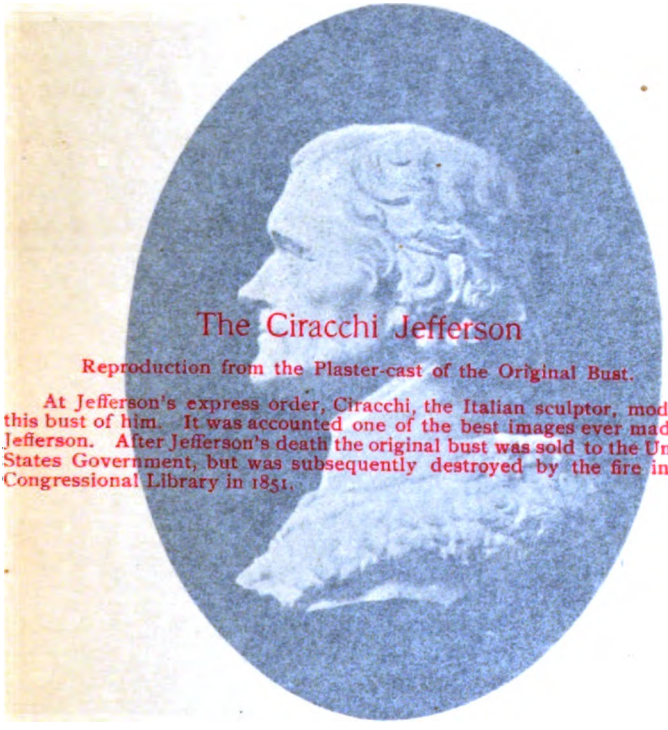

The Ciracchi Jefferson

Reproduction from the Plaster-cast of the Original Bust.

At Jefferson's express order, Ciracchi, the Italian sculptor, modeled this bust of him. It was accounted one of the best images ever made of Jefferson. After Jefferson's death the original bust was sold to the United States Government, but was subsequently destroyed by the fire in the Congressional Library in 1851.

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...ion to a Free Press

(the ... the unresponsive
... the decrees of kings and ...
... thoughts of men)—the breath
... responsive, sentient, virile, free.
... dates from Jefferson, this free
... the champion of the oppressed
... young, the guide of the mature
... aged and the mightiest power
... ses and shall ever bless mankind.

Josephus Daniels

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Signing the Constitution of the United States

(September 17, 1787)

Reproduction from the Original Painting ("A Study by Rossiter") in Independence Hall, Philadelphia, and deposited there by Johnston Livingston.*

The following extract is taken from the "Ratification of the Constitution" (Article VII), as it groups the signers of the Constitution in complete and accurate order.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE
John Langdon
Nicholas Gilman

MASSACHUSETTS
Nathaniel Gorham
Rufus King

CONNECTICUT
William Samuel Johnson
Roger Sherman

NEW YORK
Alexander Hamilton

NEW JERSEY
William Livingston
David Breasley
William Patterson
Jonathan Dayton

PENNSYLVANIA
Benjamin Franklin
Thomas Mifflin
Robert Morris
George Clymer
Thomas Fitzsimons
Jared Ingersoll
James Wilson
Gouverneur Morris

DELAWARE
George Read
Gunning Bedford, Jr.
John Dickinson
Richard Bassett
Jacob Broom

MARYLAND
James McHenry
Daniel of St. Thomas Jenifer
Daniel Carroll

VIRGINIA
John Blair
James Madison

NORTH CAROLINA
William Blount
Richard Dobbs Spaight
Hugh Williamson

SOUTH CAROLINA
John Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

GEORGIA
William Few
Abraham Baldwin

Attest:

WILLIAM JACKSON, *Secretary.*

Rhode Island is not represented because its ratification of the Constitution was not consummated till May 29, 1790.

The members of the Convention for framing the Constitution, who failed to sign for one reason or another, were: John Pickering, Benjamin West, Francis Dana, Elbridge Gerry, Caleb Strong, Oliver Ellsworth, John Lansing, Jr., Robert Yates, Abraham Clark, W. Churchill Houston, John Neilson, Luther Martin, John Francis Mercer, Patrick Henry, George Mason, James McClurg, Edmund Randolph, George Wythe, Richard Caswell, William Richardson Davie, Willie Jones, Alexander Martin, William Houstoun, Nathaniel Pendleton, William Pierce and George Walton.

*The original painting in Independence Hall, from which this photogravure was taken, is in a faded condition. Hence the blurred effect in the reproduction given here.

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Signing the Constitution of the United States

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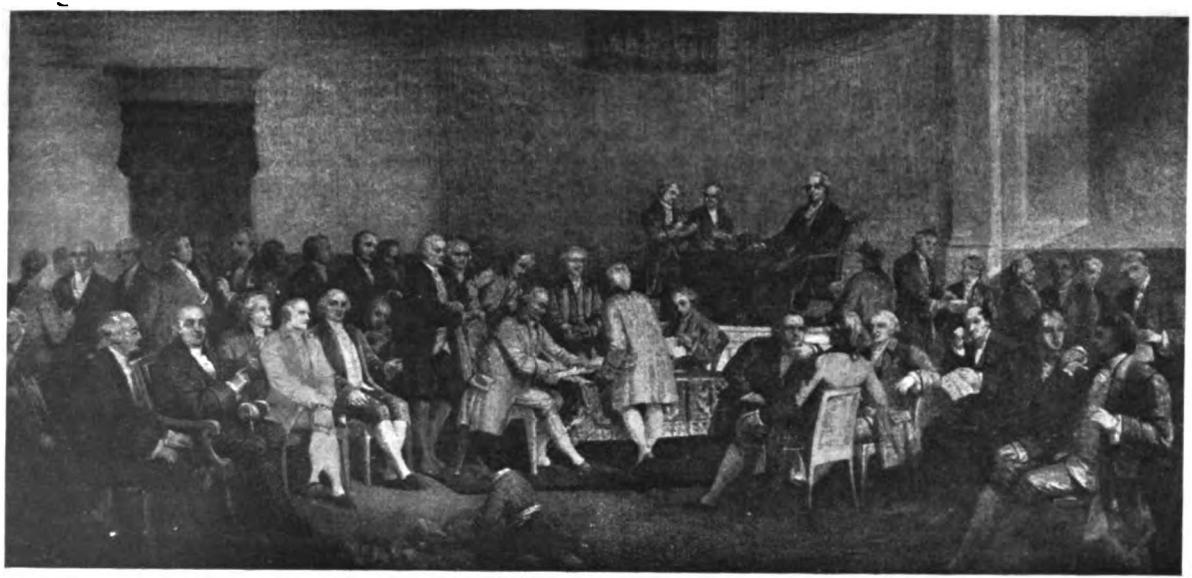

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THE BATTURE AT NEW ORLEANS.

THE PROCEEDINGS OF THE GOVERNMENT OF THE UNITED STATES IN MAINTAINING THE PUBLIC RIGHT TO THE BEACH OF THE MISSISSIPPI, ADJACENT TO NEW ORLEANS, AGAINST THE INTRUSION OF EDWARD LIVINGSTON. PREPARED FOR THE USE OF COUNSEL, BY THOMAS JEFFERSON.

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PREFACE.

EDWARD LIVINGSTON, of the territory of Orleans, having taken possession of the beach of the river Mississippi adjacent to the city of New Orleans, in defiance of the general right of the nation to the property and use of the beaches and beds of their rivers, it became my duty, as charged with the preservation of the public property, to remove the intrusion, and to maintain the citizens of the United States in their right to a common use of that beach. Instead of viewing this as a public act, and having recourse to those proceedings which are regularly provided for conflicting claims between the public and an individual, he chose to consider it as a private trespass committed on his freehold, by myself personally, and instituted against me, after my retirement from office, an action of trespass, in the circuit court of the United States for the district of Virginia.

Being requested by my Counsel to furnish them with a statement of the facts of the case, as well as of my own ideas of the questions of right, I proceeded to make such a statement, fully as to facts, but briefly and generally as to the questions of right. In the progress of the work, however, I found myself drawn insensibly into details, and finally concluded to meet the questions generally which the case would present, and to expose the weakness of the plaintiff's pretensions, in addition to the strength of the public right. These questions were of course to arise under the laws of the territory of Orleans, composed of the Roman, the French, and Spanish codes, and written in those languages. The books containing them are so rare in this country as scarcely to be found in the best-furnished libraries. Having more time than my Counsel, consistently with their duties to others, could bestow on researches so much out of the ordinary line, I thought myself bound to facilitate their labors, and furnish them with such materials as I could collect. I did it by full extracts from the several authorities, and in the languages in which they were originally written, that they might judge for themselves whether I misinterpreted them. These materials and topics, expressed in the technical style of the law, familiar to them, they were of course to use or not to use, according to the dictates of

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their better judgment. If used, it would be with the benefit of being delivered in a form better suited to the public ear. I passed over the question of jurisdiction, because that was one of ordinary occurrence, and its limitations well ascertained. On this, in event, the case was dismissed; the court being of opinion they could not decide a question of title to lands not within their district. My wish had rather been for a full investigation of the merits at the bar, that the public might learn, in that way, that their servants had done nothing but what the laws had authorized and required them to do. Precluded now from this mode of justification, I adopt that of publishing what was meant originally for the private eye of counsel. The apology for its general complexion, more formal than popular, must be found as well in the character of the question, as in the views with which its discussion had been prepared. The necessity, indeed, of continuing the elaborate quotations, is strengthened in the case of ordinary readers, who are supposed to have still less opportunity of turning to the authorities from which these are taken.

The questions arising, being many and independent of each other, admitted not a methodical and luminous arrangement. Proceeding, therefore, in a course of narrative, I have met and discussed the points of law in the order in which events presented them: thus securing, as we go along, the ground we pass over, and leaving nothing adversary or doubtful behind. Hence the mixture of fact and law which will be observed through the whole.

Vouchers for the facts are regularly referred to. These are principally, 1. Affidavits taken and published on the part of the plaintiff, and of the city of New Orleans, very deeply interested in this question. 2. Printed statements, by the counsel on each side, uncontradicted by the other, of facts under their joint observation and knowledge. 3. Records. 4. Notarial acts, and 5. Letters and reports of public functionaries filed in the office of the Department of State.

FEB. 25, 1812.

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JEFFERSON'S WORKS.

THE BATTURE AT NEW ORLEANS.

Not long after the establishment of the city of New Orleans, and while the religious society of Jesuits retained their standing in France, they obtained from Louis XIV. a grant of lands adjacent to the city, bearing date the 11th of April, 1726. The original of this grant having been destroyed in the fire which consumed a great part of the city in 1794, and no copy of it as yet produced, the extent and character of the grant is known from no authentic document. Its other limits are unimportant, but that next the river and above the city is understood to have been of 20 arpents, or acres, [of 180 French feet, or 64 yards of our measure each,] "face au fleuve," the ambiguity of which expression is preserved by translating it, "fronting the river." Whether this authorized them to go to the water line of the river, or only to the road and levee, is a question of some difficulty, and not of importance enough to arrest our present attention. To these they had added 12 ar-

Title of the Jesuits.

Fronting river.

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pents more by purchase from individuals. In 1763 the order of Jesuits was suppressed in France, and their property confiscated. The 32 arpents, before mentioned, were divided into 6 parcels, described each as "faisant face au fleuve," and the one next to the city of 7 arpents in breadth, and 50 in depth, was sold to Pradel; but how these 7 arpents, like Falstaff's men in buckram, became 12 in the sale of the widow Pradel to Renard, [Report 7.] 13 in Gravier's inventory, and nearly 17, as is said Derb. viii. ix. in the extent of his fauxbourg, the plaintiff is called on to show, and to deduce titles from the crown, regularly down to himself. In 1788, Gravier, in right of his wife the widow of Renard, laid off the whole extent of his front on the river, whatever it was, into 4 ranges of lots, and in '96 he added 3 ranges more, establishing them as a Fauxbourg, or Suburb to the city. That this could not be done without permission from the government may be true; and no formal and written permission has been produced. Whether such an one was given and lost in the fire, or was only verbal, is not known. But that permission was given must be believed, 1. From Gravier's declaration to Charles Trudeau the surveyor, which must operate as an Estoppel [Report 45.] against all contrary pretensions in those claiming under him. 2. From Carondelet's order to Trudeau, first to deposit a copy of the plan in the public archives, and

Confiscation.

Gravier's title.

Fauxbourg.

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afterwards an order for a second one to be delivered to himself, which implied necessarily that he had consented to the establishment; but more especially when B. Gravier relying on this establishment as freeing him from the repairs of the bank, the Governor declared "it was true and that Gravier was right." 3. From the records of the Cabildo, or town council, with whom the Governor sat in person, showing that at their sessions on the 1st day of January annually, for regulating the police of the city, a Commissary of police for the new quarter was regularly appointed from the year 1796, till the United States took possession. The actual settlement of the ranges next the river, and the addition of the new ranges, now probably rendered that necessary. 4. From the conviction expressed by the Surveyor that, from his knowledge of the laws and customs of the Spanish colonies, no one would have dared to establish a city, bourg, village or fauxbourg without authorization, verbal at least, from the Governor. 5. From the act of the local legislature incorporating the city of New Orleans. [Thierry 32.] That no formal written act of authorization can be produced is not singular, as that is known to be the condition of a great proportion of their titles from the government: and the extraordinary negligence in these titles was what rendered it necessary for Congress to establish, in the several territories of Orleans, Mississippi, Louisiana, Indiana and Michigan, boards of Commissioners, to ascertain and commit them to

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record. To this we may add that the principle which shall take from the inhabitants of the Suburb St. Mary the validity of their establishment, will annul a great portion of the land rights of those several territories. Finally, whatever act of the government may be considered as amounting to evidence of its ratification of the establishment of the fauxbourg, is retrospective, and will amount to an original authorization under the maxim, "omnis ratihabitio retrotrahitur, et mandato æquiparatur."

Gravier's sale.

Bertrand Gravier proceeded to sell the lots of his new Fauxbourg, and particularly he sold the whole range next the river. Such deeds for these lots as have been produced, describe them as "haciendo frente al rio," "fronting the river." And it is affirmed, [Examen 13. Poydras 7. and 18. Thierry 39.] that almost all, if not all the deeds, used the same expression. [See notarial copies of the deeds of B. Gravier to Nicholas Gravier, and of Nicholas Gravier to Escot, Girod, Wiltz.] Bertrand Gravier himself, on all occasions, [Pieces Probantes 9. 21. 28. 30. Livingston 59. Monile's deposition, MS.] declared that he had sold his lots "faisant face au fleuve," and had passed to the purchasers his right to the *devanture*, meaning everything in front of his lots. Whatever extent then towards the river, passed to the Jesuits by the term "face au fleuve," or from the king to the purchasers of the Jesuits' property, under whom B. Gravier claimed, the same extent was, by the same ex-

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pression, "face au fleuve," or "frente al rio," passed by Bertrand Gravier to the purchasers of the front lots. If the words "face au fleuve," gave him only to the road and levee, he by the same words gave them no farther; if to the water edge, then he sold to the water edge also, and having parted with all his right as riparian possessor, could transmit none to those claiming under him by subsequent title, as the plaintiff does. In a note added to the end of the printed Report of this case, whether by the reporter or the plaintiff does not appear, it is said that this objection was answered by showing, *from the deeds*, that each lot had a clear front boundary, by referring to the "*plan which in no instance crossed the road.*" And that this brings it within the rule of law which says, "in agris limitatis jus alluvionis locum non habere constat." Dig. 41. 1. 16. This process of deduction, if not clear, is compendious at least, and better placed in a note, than in the text, where explanation would have been expected. Let us spread it open and examine it. What says the deed to Nicholas Gravier for 58 lots?

Yo Don Beltran Gravier vendo a Don Nicholas Gravier cinquenta y ocha terrenos situados en esta dicha ciudad, extramuros de la puerta de Chapitulas, à saver, *trece haciendo frente al rio*, Mississipi, y lindando por el lado de abaxo, que es de esta dicha ciudad, con terreno de Don R. Jons, y por el de arriba con otros de Don J. B.

I Don Beltran Gravier sell to Don Nicholas Gravier 58 lots situated in this said city without the gate of Chapitulas, to wit, 13 *fronting the river* Missisipi, and bordering on the lower side, which is that of this said city, with the lot of Don R. Jones, and on the upper side with others of Don J. B. Sarpy, &c. And *the* 45 *lots re-*

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Sarpy, &c. Y los *quarenta y cinco terrenos restantes* completa a los cinquenta y ocho, que quedan indicados, comenzan sobre el limite de la primera calle, formande una linea directa à empezar por el terreno que se halla detras del de Don J. Poydras, todo conforme al plano que, delineado por Don C. L. Trudeau, hé entregado al comprador para su inteligencia y resguardo: però con la condicion de que me reservo el derecho de tomar la tierra que necessitaré para mi fabrica de ladrillos, en la playa ó Battura que hay en la extension de los nominados trece terrenos que hacen frente al dicho rio.

maining, the complement of the 58 before mentioned, commence above [or beyond] the limit of the first street, forming a right line, beginning at the lot which is behind that of Don J. Poydras, in conformity with the plan which having been delineated by Don C. L. Trudeau, I have delivered to the purchaser for his information and ascertainment: Nevertheless, with the condition that I reserve to myself the right to take the earth which I shall need for my manufacture of bricks on the beach or batture which is in the extension of the said 13 lots which front the river.

The first part of this description is of the 13 lots, to wit, that they front the river. The second part relates wholly to the remaining 45 lots, which begin beyond or above the first street in a straight line from the lot behind Poydras', and refers to the plan to show their position more particularly as back lots, behind the front range. It is to be noted that the public way in front of the fauxbourg is not a street: it is the same chemin royale, royal road, which has existed from early times, and has never been merged in the character of a street. Nothing can prove more clearly, that this reference to the plan was not to give a front line to the 13 lots, than that the same deed reserves the right of digging earth on the batture beyond that line. Now if nothing was meant to be conveyed *beyond* the front line marked

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in the plan, why reserve a right to dig earth on the batture, which is *beyond* that line? And that Nicholas Gravier, Escot, Girod and Wiltz did not consider this line as the limit of their rights, appears from their deeds conveying the *batture* expressly by that name, with the lots themselves. On the whole, we see here a curious specimen of tergiversation in reasoning. When urged that the grant to the Jesuits, and to Bertrand Gravier, though expressed to be "face au fleuve," must still have stopped at this line or edge of the royal road, it is answered that those terms convey to the water edge, and make it an "ager arcifinius," to which the right of alluvion appertains. But when Bertrand Gravier conveys to his purchasers "face au fleuve," they turn about and say that the same identical words "face au fleuve," convey now only to this same line or edge of the royal road, which they overleaped before, and make the grounds conveyed an "ager limitatus," to which the right of alluvion does not appertain. It is perfectly equal which of the meanings is ascribed to these words. Only give them the same in both instances, and say which. If these words make the road your boundary, you never had a right to the batture beyond it. If they extend to the river what was conveyed to *you*, they extend to the river also what was conveyed *from you*. Will it be pretended that, after establishing his town, Bertrand Gravier could then have sold the streets to others? and yet he might, a

Streets.

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fortiori, having not included them in any deed. But does not common sense and common honesty proclaim that the establishment of his town, and sale of the lots, implied a relinquishment to the inhabitants of the communications of streets and shores adjacent, as a common, which are the necessary and constant appendages of every town? The express conveyance then of his riparian rights, and the implication as to them and the streets, are believed to be conclusive to show that the plaintiff having had no right, can have sustained no wrong.

In 1797, Bertrand Gravier died intestate; and at this epoch we must introduce what constitutes the sole object of the existing contest. Opposite to the habitation or plantation of B. Gravier, now the Fauxbourg Ste. Marie, the beach of the river, called in that country Batture, of ordinary breadth within memory, has sensibly increased, by deposits of earth, during the annual floods of the river, [Derb. xix.] till in the year 1806, it was found to extend in breadth, at low tide, from 122 to 247 yards of our measure, from the water edge into the river: and from about 7 f. height, where it abuts against the bank, declining to the water edge. See Pelletier's plan annexed. Thiery xvii. While uncovered, which is from August to January inclusive, it has served as a Quai for lading and unlading goods, stowing away lumber and firewood, and has furnished all the earth for building the city, and raising its streets and courts, essential

Beach or Batture.

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in that oozy soil. Derb. ii. While covered, which is during the other six months of the year, from February to July inclusive, [Liv. 58. Poydras 20. 21. 23.] it is the port for all the small craft of the river, and especially for the boats of the upper country, which, in the season of high water, can land or lie no where else in the neighborhood of the city. During this period, they anchor on its bottom, or moor to its bank. It is then, like every other beach, the bed of the river one half the year, and a Quai the other half, distinguished from those of tide waters, by being subject to an annual, instead of a semidiurnal ebb and flood. In this beach or shoal, with the bank to which it is adjacent, if Bertrand Gravier claimed any right, as riparian proprietor of the habitation, he had certainly meant to convey that right to the purchasers of the front lots, by the term "frente al rio," "fronting the river," reserving expressly, as we have seen, from one purchaser of 58 lots, a right to take earth, from the beach, for his brickkilns. As he died without children, the inheritance belonged to John Gravier, and other brothers and sisters whom he had left in France, or their representatives, as co-heirs.

Purchase by Inventory.

By the civil law, if an heir accepts the inheritance, he is considered, not merely as the representative, but as continuing the person of the ancestor himself, is answerable for all his debts, and out of all his property, as well his own, as what he had newly acquired by the inheritance. Time,

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therefore, was allowed him to inform himself of the condition of the estate and debts, during which it was considered as an hæreditas jacens, vested in nobody. If he declined taking the inheritance simply as heir, he was allowed to take it as purchaser, or in their language, as heir with the benefit of inventory: whereupon an inventory and appraisement of it took place, and he had the pre-emption at the appraised value. He was then liable to no more debts than the amount of the appraisement; and if there was a surplus of the appraised value over and above the debts it was his, if a single heir, or partitioned among the co-heirs, as parceners, if there were more than one. Brown. civ. law, I. 218. 302. Kaim's law tracts, 389. Gibbon's c. 44. 153. Bertrand Gravier is understood to have left France indebted and insolvent: and John Gravier, therefore, either knowing, or ignorant of the amount of the debts, chose on behalf, or perhaps in defraud, of the co-heirs, to decline the inheritance, and to take the estate as a purchaser by inventory and appraisement. It was inventoried and appraised. In the inventory is placed a single article of lands, in these words, "are placed in the inventory the lands of this habitation, whose extent cannot be calculated immediately, on account of his having sold many lots; but Mr. N. Gravier informs us that its bounds go to the forks of the bayou, according to the titles." And in the appraisement also there is but this same single article of lands, thus described, "about thirteen ar-

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pents of land, of which the habitation is estimated, including the garden, of which the most useful part is taken off in front, the residue consisting of the lowest part, [to wit, that descending back to the bayou,] the side being sold to Navarro, one Percy, and the negro Zambo, a portion of which, etc., estimated at 190 D. the front acre, with all the depth, which makes 2470 D." Then follows the adjudication, which adjudges to John Gravier "the effects, real estate, moveables and slaves *which have been inventoried* as belonging to the estate of his deceased brother Bertrand Gravier, etc." Report 9. 10. We see, then, that no lands were inventoried but the thirteen arpents in front, composing the inhabitation. And it is impossible that that term should be meant to include the beach of the river, cut off from it by the intervention of the whole Fauxbourg of seven ranges of squares; or that they should not have used a more obvious expression, if the idea of the beach had been in their minds. Nobody could consider these two parcels, distant and disjointed as they were, as being one parcel only, one habitation. No man having two farms, or two tracts of land, separated by the lands of others, would expect that by devising or conveying one, the other would pass also. In fact, at that time, neither John Gravier nor any one else, considered the beach as any part of Bertrand Gravier's estate: and in the appraisement, they estimate the front arpents, (that is, fronting on the fauxbourg,) with all their depth to the bayou, at 190 dollars, the

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front arpent; contemplating clearly only what was between the fauxbourg and bayou. Accordingly Fernandez, acting for the Depositor General, the legal officer in those cases, swears that he took charge and possession of all the estate according to the inventory which had been made from the 28th of June to the 4th of July, 1797; that, in that inventory, the batture never was mentioned, or heard of, as property of Gravier, nor in charge of the Depositor, and that, on delivering the estate to John Gravier, the batture never was spoken of. It is equally certain that had there been an idea that they were smuggling the batture away, through these proceedings, the citizens of New Orleans would not have been so silent, nor the Governor, the Cabildo, and other Spanish authorities so passive, when so active on all former occasions respecting the batture: and that had the batture been under the view of the appraisers, instead of estimating it at 2470 dollars, conjointly with other thirteen arpents, a very different sum must have been named. The batture alone is now estimated at half a million of dollars. But the truth is, that neither John Gravier, nor any one else, at that day, considered it but as public property. And for six years ensuing, he never manifested one symptom of ownership; until Mr. Livingston's arrival there from New York, with the wharves and slips of that place fresh in his recollection. The flesh-pots of Egypt could not suddenly be forgotten, even in this new

Livingston's arrival.

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land of Canaan. Then John Gravier received his inspiration that the beach was his; and is tempted, by one kind of bargain after another, to try his fortune with it. It was only to lend his name, and receive a round sum if anything could be made of it. To get over the palpable omission of it in the inventory and appraisement, they find a man whose recollection is exactly à propos; a Henry Parisien, a comedian by profession, and a joiner by trade. He had been one of the appraisers, ten years before, and recollected, and so swore that he had "*walked on the batture*, before the closing of the appraisement, to ascertain its extent and be the better able to judge of its value, and that it was through forgetfulness that *it had not been taken into the estimate.*" Pièces Prob. 33. It happens that nature bears witness against him. From the 20th of June to the 4th of July is within the period of high waters; and it is proved that, at the very time of the appraisement, the river was still overflowing, and the batture covered with water: the journals of the sawmills further attest that they did not cease to work till the 25th of August of that year: and when the waters of the river are sufficiently low to stop the mills, all the battures are still covered with water. P. Pr. 34. However even this Henry Parisien swears, "*that the batture was not in the estimate*, and that it was through forgetfulness that it was not." Examin 19. Rep. 21. Pi. Prob. 33. No matter through what cause, it is enough that it was *not in*

Parisien.

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the inventory or estimate, and of course not sold to J. Gravier. This corroborates the testimony of the Depositor, that he neither had it in his charge, nor included it in the estate sold and delivered. J. Gravier must, therefore, as to this part of his brother's estate, if his it were, recommence his work, by having a new inventory, appraisement and adjudication. But to repel the present proceeding, it suffices that having made his election to take, not as heir, but purchaser, this beach is not yet his; it is still an hæreditas jacens, and before he can convey it to Mr. Livingston, he must get it by a new process, and make a third bargain.

We will proceed further to trace the history of this acquisition of the batture, by the plaintiff, who writes a letter of lamentations to some member of the government, on the 27th of June, 1809. That "Congress will probably adjourn without coming to any decision on the subject of my removal by the late President of the United States from my estate at New Orleans." A most ungrateful complaint; for had he not been removed, he must, at the time of writing this letter, have been, as his estate was, some 10 or 12 feet under water; the river being then at its greatest height. And when was this notable discovery made, that the beach of the river was the separate and exclusive property of J. Gravier, clear of all public right to its use? Let us hear the Governor, in answer to this question. In a letter to the Secretary of State of October 13, 1807, he says, "early after the

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arrival of Mr. Livingston in this territory, he became concerned in the purchase of a parcel of ground fronting the fauxbourg of this city, commonly called the batture, a property which had been occupied as a common by the city for many years previous, and the title to which, in the opinion of the inhabitants was unquestionable." The day[1] of the arrival of Mr. Livingston in New Orleans I do not know; but I recollect he was one of the earliest emigrants to that country, which was ceded to the United States on the 30th of October, 1803. We are told, [Rep. 11. Thierry 5.] it was proved by some oral testimony that J. Gravier *began* an inclosure of 500 feet square in that year, and completed it in the next. The day of beginning is not stated; but we may safely presume it was not while the French Governor thought the country belonged to his master, and most probably not till after "the early arrival of Mr. Livingston." This enclosure was demolished by an order of the Cabildo of Feb. 22, 1804.[2] The next step was to make an ostensible deed, to an ostensible purchaser,[3] a Peter de la Bigarre, a brother emigrant of Mr. Livingston's from New York, some old acquaintance. This was dated March 27, 1804, is expressed to be in consideration of 10,000 dollars, and conveys two undivided thirds of all that part or parcel of land, situate on the bank

Bigarre.

[1] He says, February, 1804.
[2] Thierry.
[3] Notar. copy, Gravier to Bigarre.

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[sur la rive] of the river Missisipi, between the public road and the current of the said river, etc., with a warranty. I call the purchases ostensible, because notwithstanding his pretended purchase, J. Gravier, on the 20th of October, 1805, [Rep. 1.] commenced a suit against the city, as proprietor of the whole, and the court adjudged him proprietor of the whole; and because the same J. Gravier, [Poydr. 3.] by a deed to the same P. de la Bigarre, in which no mention was made of the former, or reference to it, conveys to him on the 14th Dec. 1806, the batture Ste. Marie, along the whole limits of this land, between the road and river, on condition that he shall pay all expenses of the suit depending, with 50,000 dollars in addition; that the property shall remain unsold and hypothecated for the purchase money till paid, and that if the law-suit fails, the sale is void, and Bigarre to pretend to no damages for non-execution. It is observable here that neither buyer nor seller risked anything. It was a mere speculation on the chance of a law-suit, in which they were to divide the spoils if successful, and to lose nothing if they failed.[1] It was by our law a criminal purchase of a pretense title, 32. H. 8. 9. and equally criminal by the law of that territory, where I presume the provision of the Roman law is in force, "qui improbe coeunt in alienam litem, ut quidquid ex condemnatione in rem ipsius redactum fuerit, inter eos communicaretur, lege Julia, de

[1]Lafon, in his map of New Orleans, says expressly that the Mississippi, at the city, is uniformly of the breadth of 300 toises only.—*MS. Note.*

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vi privata, tenentur." Dig. 47. 8. 6. 4 Blackst. 135. "Whosoever shall take part in the suit of another, so that whatever shall be recovered by the judgment is to be divided between them, shall be subject to the Julian law, de vi privata." By which law, ib. tit. 7. § 1. they were to lose one-third of their goods, and be rendered infamous. The deed was not only criminal on its face, but was void by an express law of the territory, [a law of Governor Unzaga. Poydras 6. Rep. 25.] and so pronounced to be on the floor of Congress by their representative, because not executed before either witnesses or notaries. It was kept secret from its date, till the day before judgment was pronounced, when the parties becoming apprised of the decision which was to be given, (for this was known at least on the 20th of May,) [Governor Claiborne's letter May 20, '07,] produced it, for the first time, to the Notary to be recorded. And the day after its publication, the court, by the opinion of two members against one, [Examen 3.] adjudged the property wholly to the very man, who, if he had ever had any right, had conveyed away two-thirds of it, before he brought his action, and the whole while it was pending. The alarm which this adjudication produced was immediate and great. The fact was notorious that, from the earliest to the latest extension of the beach, the public had had a free use of it, as their Quai in low water, and in high water their port; and never before had their right

Decision of Court.

Alarm occasioned.

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been doubted by themselves, or questioned by their riparian possessors. If any fact was ever proved by human testimony, this is. Turn to the Pieces Probantes, and out of 29 affidavits of the oldest and most respectable persons in the territory, men who had, most of them, borne offices under their former government, 21 of them uniformly declare that the public had ever been considered as having a right to the beach, as their port and Quai, that, as such, the Governors and Cabildo had the constant care and control of it, had demolished buildings and enclosures erected on it, had, by public ban, prohibited all erections or obstructions to its use, had themselves erected a rampart, to inclose within it a chamber accessible for earth at high water for rebuilding the city after the fire, and exercised uninterruptedly every other act of authority derived from the public rights; and 11 of them prove, as far as a negative can be proved, that the Gravier, till the change of government, and new views by Edward Livingston, had never pretended to more than the right of Common in it, and never had questioned that of the public, or the authority of the Governor and Cabildo over it. While they held the adjacent plantation indeed, they maintained the road and bank, as all rural proprietors are obliged by[1] law to do: for here it is proper to observe, that pursuing the spirit of the Roman law, which prescribed that every one should maintain the public

Servitude of road.

[1] Rep. 19.

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road along his own dwelling, "construat vias publicas unusquisque secundum propriam domum." Dig. 43. 10. 3. The lands in Louisiana were granted generally on a condition, (called in those days *servitude*,) of furnishing ground for a public road, and of opening and maintaining that road. From which condition, however, they were released as to any portion of the ground which should afterwards become a town; the expense of roads or streets of that portion devolving then on the town itself. Accordingly B. Gravier, after establishing the front of his plantation into a suburb, and thus cutting off the residue from the road and the river, being[1] called on to repair the road by an order from Governor Carondelet, who seems at the moment not to have adverted to the change, Bertrand Gravier answered, that having sold the lots *faisant face au fleuve*, fronting the river, he had abandoned the batture to the town, and that the road and levee could not be at his expense, the Governor correcting himself at once, says, "Gravier is right, all this is true," and immediately, and ever after had the repairs made by the public. And the Graviers from that time stood discharged from these burdens on the same principle which had freed the original owners of the site of the city from maintaining the banks of the city. This is declared by an host of witnesses in the Pieces Probantes, and probably could have been declared by every ancient inhabitant of the place. We are told indeed by La-

[1] Monile's affidavit, MS.

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roche and Segur, in their affidavit, [Livingston 66.] of Carondelet, and some other Governor asking leave of Gravier in 1795 and 1798, to deposit masts on the beach. If this be true, which Mr. Thierry, [p. 42.] who knew the witnesses, treats as ridiculous and absurd, it shows that they were forgetful, or inconsistent, or over complaisant; but not that Gravier required, or expected to be asked; and much less could it divest a public right, acknowledged from the earliest times, and essential to the commerce and existence of the city. An accurate discrimination indeed between the measure of right in the riparian proprietor while he held the adjacent farm, in the individuals of the nation as usufructuaries, and in the sovereign as their representative and trustee, as respectively apportioned to them by the law, seems not to have been attended to either by the citizens at large, or the adjacent proprietors. The riparian possessor appears to have been sensible he had some rights, without distinctly understanding what they were: but, whatever they were, he knew he had parted with them by the deeds establishing his fauxbourg. The citizens, in the daily habit of using without control the port and Quai, imagined themselves exclusive proprietors of its soil, and came forward in that capacity, claiming, sometimes under some vague title which they did not define, and sometimes under the abandonment of right by Bertrand Gravier; the Sovereign, formerly their kings, but now the United States the legal holder of the public rights in the

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beds, beaches and banks of all navigable waters, seems not to have been thought of at all in the contest. The United States were no party to the suit; nor could they be, having made themselves *amenable* to no tribunal. Their property can never be questioned in any court, but in special cases in which, by some particular law, they delegate a special power, as to the boards of Commissioners, and in some small fiscal cases. But a general jurisdiction over the national demenses, being more than half the territory of the United States, has never been by them, and never ought to be, subjected to any tribunal. Not adverting to this circumstance, however, the consternation in New Orleans, on this decision, was like that of Boston, on the occlusion of their port by the Boston port bill. If we have not forgotten that feeling, we may judge what the citizens of New Orleans felt on this decree of the court.

United States no party.

The Governor instantly writes, [letter of May 20, '07.] "I understand that this morning an important cause has been determined, in which Edward Livingston was the *real* plaintiff, and the city defendant, as to the right of property to some lands in front of the fauxbourg, made by the river, and over which the city has heretofore exercised a right of ownership. My impression is that the United States are the legal claimants to it." On the 21st of August, 1807, Mr. Derbigny's opinion was published, [Thierry 5.] and first brought into view the right of the United States,

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and that the sentence of the court must of course, to them, be a mere nullity, "res inter alios acta, quæque aliis non potest præjudicium facere." A thing passing between others, and which to no others can do prejudice. Codex. 7. 60. And coming, with respect to the United States, under the provisions of the same code.

Tit. 56. "Si neque mandasti fratri tuo defensionem rei tuæ, neque quod gestum est ratum habuisti, præscriptio rei judicatæ tibi non oberit: et ideò non prohiberis causam tuam agere, sine præjudicio rerum judicatarum."

"If you have not committed to your brother the defence of your right, nor sanctioned what has been done, the plea *rei judicatæ* shall not bar you: and therefore you shall not be precluded from conducting your own cause, without exception from a former decision."

Certainly the city council did not appear, or pretend to appear under authorization from the government of the United States, nor as the advocates of their rights. They were called there as defendants of their own claim. The court did not undertake to decide on the right of the United States, which was neither before them, nor within their competence; and the injunction they issued could only be addressed to the parties between whom they had adjudged, and not to suspend the rights of others whom they had never heard, much less of the United States, who could not be heard before them. See 2 Dallas 408. 3 Dallas 412. 414. 415.

Livingston's Intrusion

Presuming, however, that the coast was now clear, and the question finally settled, the ostensible actors withdrew, and their prin-

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ciple comes forward, is put into possession by the Sheriff, and begins his works. The Governor, in his letter of Sept. 3, 1807, says, "a few days since, [Aug. 24.] Mr. Livingston employed a number of negroes to commence digging a canal which he projected to take in a part of the land called the batture. But the citizens assembled in considerable force and drove them off. On the day following he went in person, but was again opposed by the citizens. The minds of the people were much agitated. The opposition is so general that I must resort to measures the most conciliatory, as the only means of avoiding still greater tumult, and *perhaps much bloodshed*. I have not issued a proclamation because it might make an impression in the United States that the people are disposed for insurrection, which is not true. My opinion is that the title is in the United States. If the batture be reclaimed, it is feared the current of the Mississippi will in some measure change its course, which will not only prove injurious to the navigation, but may occasion degradation in the levees of the city, or those in its vicinity." To abridge our narration by giving the substance of the communications. The people assembled the next day about the same hour, and for several days successively, by beat of drum. [Livingston's letter of Sept. 15. '07.] On Monday the 31st of August, Mr. Livingston recommenced his work, after having given notice that he should do so. He began about 10 o'clock, A.M. and about 4 or 5 o'clock in the afternoon the people

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assembled again and drove off his laborers. On the 14th of September he again attempted to work, getting two constables to attend his laborers. The people drove them off, and the constables having noted on a list some of those present, they seized them, took the list and tore it to pieces. [Sheriff's letter.] On the next day he writes to the Governor that he shall set his laborers to work again that day at 12 o'clock, and "he shall not be surprised to see the people change the insolence of riot into the crime of murder." At noon he accordingly placed 10 or 12 white laborers there. In the afternoon the people re-assembled to the number of several hundreds. The Governor repaired there and spoke to them. He was heard with respectful attention: and one of them, speaking for the whole, expressed the serious uneasiness which the decision of the court had excited, the long and undisturbed possession of the batture by the city, as well under the French as the Spanish government, and the great injury which would result to the inhabitants if the land should be built upon and improved. And another declaring that they wished the decision of Congress, and in the mean time, no work to be done on the batture, there was a general exclamation from the crowd, "that is the general wish," followed by a request that they might nominate an agent to bear to the President of the United States, a statement of their grievances, and that the Governor would recommend the agent to the govern-

Appeal to government of the United States

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ment. He said he would do so, and they nominated Col. Macarty, by general and repeated acclamations. They then withdrew in peace to their respective homes, and on the 16th the Governor expresses the hope that this unpleasant affair is at an end, that everything is then quiet, and the public mind much composed; that some of his hotheaded countrymen censured the mild course which was pursued, and would have been better pleased if the *military* had been called upon to disperse the assemblage. But I feel, says he, that the policy adopted was wise and humane, and that a contrary conduct would have increased the discontents, and *occasioned the effusion of much innocent blood.* The Louisianians, he adds, are an amiable, virtuous people, but sensibly feel any wrongs which may be offered them. Mr. Livingston is alike feared and hated by most of the ancient inhabitants. They dread his talents as a lawyer, and hate his views of speculation, which in the case of the batture was esteemed very generally by the Louisianians no less iniquitous, than ruinous to the welfare of the city." The Governor says in another letter of October 5, to the Secretary of State, that in a progress he made a few days afterwards through several parishes of the territory, he perceived but one sentiment with respect to the decision of the court. The long and uninterrupted use of the batture by the city, the sanction given by the Spanish authorities to the public claim, and the heavy public expenditures in maintaining the levee which fronts it, seem

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to have given rise to a very general opinion that the court has been in error in deciding the batture to be private property. On the 13th of November he again writes, "I should be wanting in duty did I not earnestly recommend the subject of the batture to the attention of the government. There is no doubt but the agents of Spain considered it as a public property, and did appropriate the same to the use of the city, as a common. I should presume that, under the treaty, the United States may justly claim the batture, and if any means can be devised to arrest the judgment of the territorial court, or to carry this case before another tribunal, the earlier they are resorted to, the better; for Mr. Edward Livingston is now in possession of the property, and *making improvements thereon.*" And the next day, Nov. 14, a grand jury of the most respectable characters of the place gave in a presentment to the court in which they say, "We present as a subject of the most serious complaint the present operations on the batture by Edward Livingston and others connected with him: that this is from 4 to 6 months of every year a part of the bed of the river, and an important part of the port of New Orleans: that these operations of Edward Livingston are calculated to obstruct the free navigation of the river, to change the course of its waters, to deprive our western brethren, whose only market for the produce of their extensive territory, is to be found in this city, of the deposit which has hitherto remained

Livingston's works.

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free to them, and not only of incalculable improtance, but of absolute necessity. Whether it be private or public property, is immaterial, so long as the laws do not permit such use of it as to injure and obstruct the navigation: and we present it as our opinion that all such measures should be taken as are consistent with law to arrest these operations which are injurious for the present, and, in changing the course of the river, are hazardous in the extreme." We find Mr. Livingston then, instead of awaiting the decision of Congress, the only constitutional tribunal resuming his works boldly, and the people, whom he representd as like "to change the insolence of riot into the crime of murder," appealing peaceably, by presentment, to the laws of their territory until the National government should decide. In the latter end of the same year, [Surveyor's Rep. to Mayor, Dec. 28, '08.] he opens a canal from the bank directly through the beach into the river [1]276 feet long, 64 feet wide, and 4 feet 2 inches deep at low water, and with the earth excavated he forms a bank or quai, on each side, 19 feet 6 inches wide, from 4 to 6 feet high above the level of the batture, and faced with palisades. Within one year after this, what had been anticipated by the Governor, the grand jury and others, had already manifested itself. In Dec. of the ensuing year, 1808, [See Surveyor's rep. Dec. 28, '08.] a bar had already formed across the mouth of the canal, which was dry at low water, the course of

[1] These are French measures: add a fifteenth to make them ours.

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the waters had been changed during the intervening flood, and the places where dry ground first showed itself, on the decrease of the river, were such as had, the year before, been navigable at low water. [Mayor's answer to Governor, Nov. 18, '08.] The port in front of the town had been impaired by a new batture begun to be formed opposite the Custom house, which could not fail to increase by the change of the current. The beach or batture of St. Mary had, in that single tide extended from 75 to 80 feet further into the river, and risen from 2 to 5 feet 10 inches generally, and more in places, as a saw-scaffold which, at the preceding low tide, was 7 feet high, was now buried to its top; and Tanesse, the Surveyor, [See his affidavit, MS.] in his affidavit says he does not doubt that these works have produced the last year's augmentation of the batture, at the expense of the bed of the river, have occasioned the carrying away a great part of the platin or batture of the lower suburbs, and breaking the levee of M. Blanque next below, and that the main port of the city being a cove, immediately below Livingston's works, would, if they were continued, be filled up in time; and it is the opinion of Piedesclaux also, [See his 3d affidavit, MS.] that they would produce changes in the banks of the river, on both sides, prejudicial to the city, and riparian proprietors, by directing the efforts of the river against parts not heretofore exposed to it. And Mr. Poydras tells us, [p. 20 of one of his speeches,] that when the river is at its height, the boats which

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drift down it can only land in the eddies below the points, as they would be dashed to pieces in attempting to land in the strong current. That, at the town, they cannot land for want of room, there being always there two or three tier of vessels in close contact; nor at the lower suburbs of Marigny, which being at the lower part of the cove, are too much exposed both to winds and current. Indeed no evidence is necessary to prove that in a river of only 1200 yards wide, having an annual tide of 12 to 14 feet rise, which brings the water generally to within 8 or 10 inches, and sometimes 2 or 3 inches, of the top of the levee, insomuch that it splashes over with the wind, [See Peltier's, and Tanesse's affidavits, MS. and also the maps,] were the channel narrowed 250 yards, as Mr. Livingston intends, that is to say, a fourth or fifth of its whole breadth, the waters must rise higher in nearly the same proportion, that is to say, 3 feet at least, and would sweep away the whole levee, the city it now protects, and inundate all the lower country.

Thus urged by the continued calls of the Governor, who declared he could not be responsible for the peace or preservation of the place, by the tumult and confusion in which the city was held by the bold aggressions of the intruders on the public rights, by the daily progress of works which were to interrupt the commerce of the whole western country, threatened to sweep away a great city and its inhabitants, and lay the adjacent country under water, I listened to the calls of duty, imperious calls, which had I

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shrunk from, I should have been justly responsible for the calamities which would have followed. On the 28th of October, '07, the Attorney General had given his opinion, and on the 27th of November, I asked the attendance of the heads of the departments, to whom the papers received had been previously communicated for their consideration. We had the benefit of the presence of the Attorney General, and of the lights which it was his office to throw on the subject. We took of the whole case such views as the state of our information at the time presented. I shall now develop them in all the fulness of the facts then known, and of those which have since corroborated them.

Cabinet deliberation.

The first question occurring was, what system of law was to be applied to them? On this there could be but one opinion. The laws which had governed Louisiana from its first colonization, that is to say, the laws of France with some local modifications, were still in force when this question was generated by the sale of the Jesuits' property to B. Gravier and others. France had indeed, about the end of the preceding year 1762, by a secret convention, ceded Louisiana to Spain, to be delivered whenever Spain should be in readiness to receive it. But this was not announced to the inhabitants till the 21st of April, 1764, nor did Spain receive possession till the 17th of August, 1769. [9 Raynal, 222. 235.] In the mean time the French government

What law?

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and laws continued, the Jesuits' property was sold, and purchased under the faith of the existing laws; and according to these laws must the rights acquired by the purchaser, or left in the crown, be decided. Indeed in no case are the laws of a nation changed, of natural right, by their passage from one to another denomination. The soil, the inhabitants, their property, and the laws by which they are protected go together. Their laws are subject to be changed only in the case, and extent which their new legislature shall will. The changes introduced by Spain, after 1769, were chiefly in the organization of their government, and but little in the principles of their jurisprudence. The instrument which some have understood as suppressing the French and introducing the Spanish code, is the proclamation of O'Reilly of November 25, 1769, two months after the actual delivery of the colony. [See appendix to documents communicated to Congress by the President, with his message of October 17, 1803.] The transfer of the country, however, had been announced to the people five years before. Now surely, during these five years the French laws must have continued entire, and of course after them, so far as not altered. And that this proclamation made specific only, and not general alterations, a brief examination of its tenor will evince. It begins by charging the late council with a participation in the insurrection which had taken place,

Proclamation of O'Reilly.

French code.

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and by declaring it indispensable to abolish that, and to establish the *form* of politic government and administration of justice prescribed by the wise laws of Spain. But a *form* of government may surely be changed, and the mass of laws remain the same, as took place in our revolution. He proceeds then to establish that *form of government*, *dependence* and *subordination*, which should accord with the good of the service, and happiness of the colony. For this purpose he substitutes a Cabildo, in place of the ancient council, and instead of former analogous officers, he says there shall be Alferes, Alcades, Alguazils, Depositors, Regidors, a Scrivener, Procurator, Mayordomo, etc.; adopting thus the Spanish instead of the French organization of officers, for the administration of the laws. He changes the manner of proceedings in judicial trials, and of pronouncing judgments, according to a digest made by Unestia and Rey, by his order, *until* a general knowledge of the Spanish language and more extensive information on the statutes themselves might be acquired; prescribes rules for instituting actions by parties, of different denominations, the names and substance of the pleadings, rules for appearances, answers, replications, rejoinders, depositions, witnesses, exceptions, trials, judgments, appeals, executions, testaments, probates, advancements, and distributions: not changing the great outlines of the law, or the *ratio decidendi* generally; but merely the organization of officers, and forms of their proceeding. He

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states also the criminal law, what it is in sundry cases of irreligion, treason, murder, theft, rape, adultery and trespass, proclaiming mostly what was already law; lastly, he establishes the fees of officers, and with that closes the proclamation, without a word said about abolishing the French, and substituting the Spanish code of laws generally. As far then as this instrument makes any special changes, its authority is acknowledged. But the very act of making special changes is a manifestation that a general one was not then intended. He did not mean by this instrument to change "all and some." One may indeed conjecture, from loose expressions in the instruments, that a more extensive change was in contemplation for some future time, when the inhabitants, as it says, should have acquired a general knowledge of the Spanish language. But *until* then expressly, and in the interim, the innovations it specifies are the only ones introduced. The great system of law which regulates property, which prescribes the rights of persons and things, and sanctions to every one the enjoyment of those rights, is left untouched, in full force and authority. If such a radical change were really meditated, it was never carried into execution; nor seems at any after time to have occupied seriously the attention of government. In the following year 1770, O'Reilly issued an additional ordinance respecting grants of lands; and Carondelet, in 1795, (26 years after the possession of the colony, and a year only before its transfer to

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us,) passed an ordinance of police concerning bridges, roads, levees, slaves, coasters, travellers, arms, estrays, fishing and hunting; and these three acts seem to constitute the whole of the changes made in the established system of laws during the Spanish occupation of the country. Probably the Spanish authorities found, in the progress of their administration, that the difference between the French and Spanish codes, taken both from the same Roman original, would not justify disturbing the public mind, by a formal suppression of the one, and substitution of the other. Probably the officers themselves, not adepts in either, and partly French, and partly Spanish individuals, confounded them in practice as they found convenient; and hence the ill-defined ideas of what their laws were. But certainly when we appeal, as in the present case, to exact right, the French code is the only one sanctioned by regular authority; and the special changes before mentioned, of organization and police, having no relation to the beds and increments of rivers, that code is to give us the law of the present case. That code, like all those of middle and southern Europe, was originally feudal, [Encyclop. Method. Jurisprudence. Coutume. 400.] with some variations in the different provinces, formerly independent, of which the kingdom of France had been made up. But as circumstances changed, and civilization and commerce advanced, abundance of new cases and questions arose, for which the simple and unwritten laws of feudalism had made

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no provision. At the same time, they had at hand the legal system of a nation highly civilized, a system carried to a degree of conformity with natural reason attained by no other. The study of this system too was become the favorite of the age, and, offering ready and reasonable solutions of all the new cases presenting themselves, was recurred to by a common consent and practice; not indeed as laws, formally established by the legislator of the country, but as a RATIO SCRIPTA, the dictate, in all cases, of that sound reason which should constitute the law of every country.[1] Over both of these systems, however, the

Roman.

[1] The following instances will give some idea of the steps by which the Roman gained on the Feudal laws. A law of Burgundy provided that "Si quis post hoc barbarus vel testari voluerit, vel donare, aut Romanam consuetudinem, aut barbaricam, esse servandam, sciat." "If any barbarian subject hereafter shall desire to dispose by legacy or donation, let him know that either the Roman or barbarian law is to be observed." And one of Lotharius II. of Germany, going still further, gives to every one an election of the system under which he chose to live. "Volumus ut cunctus populus Romanus interrogatur quali lege vult vivere: ut tali lege, quali professi sunt vivere vivant: illisque denuntiatur, ut hoc unusquisque, tam judices, quam duces, vel reliquus populus sciat, quod si offensionem contra eandem legem fecerint, eidem legi, qua profitentur vivere, subjaceant." "We will that all the Roman people shall be asked by what law they wish to live: that they may live under such law as they profess to live by: and that it be published, that every one, judges, as well as generals, or the rest of the people, may know that if they commit offence against the said law, they shall be subject to the same law by which they profess to live." Encyc. Method. Jurisprudence, Coutume. 399. Presenting the uncommon spectacle of a jurisdiction attached to persons, instead of places. Thus favored, the Roman became an acknowledged supplement to the feudal or customary law: but still, not under any act of the legislature, but as "raison écrite," written reason: and the

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occasional edicts of the monarch are paramount, and amend and control their provisions whenever he deems amendment necessary; on the general principle that "leges posteriores priores abrogant."[1] Subsequent laws abrogate those which were prior. This composition of the French code is affirmed by all their authorities. One only of them shall be particularly cited, to wit, Ferriere Dict. de droit. Ordonnance.

"Les Ordonnances sont les vraies lois du royaume. Elles font la partie la plus générale et la plus certaine de notre droit Français, attendu qu'elles sont soutenues de l'autorité aussi bien que de la raison; au lieu que les loix Romaines ne subsistent que par leur équité, elles n'ont par elles-mêmes aucune autorité, qu'autant qu'elles sont considérées comme une raison écrite, du moins en pays coutumier; et à l'égard du pays de droit écrit, les loix Romaines n'y ont force de loi, que parceque nos rois ont bien voulu y consentir.

The Ordinances are the true laws of the kingdom. They constitute the most general and certain part of our French law, inasmuch as they are supported by authority as well as reason; whereas the Roman laws stand on their equity alone, having of themselves no authority, but as they are considered as *written reason*, at least in the provinces of Customary law. And as to those of written law, the Roman laws are in force only because our kings have thought proper to consent to it.

This system of law was transferred to Louisiana, as

cases to which it is applicable, becoming much the most numerous, it constitutes in fact the mass of their law.

[1] Since this publication, Gen. Armstrong, our late Minister at Paris, has sent me a printed copy of Crozat's Charter in French, which he says he obtained directly, and in person from the depôt of laws in Paris, but which he had no means of comparing with the original. This printed copy, with Gen. Armstrong's letter, I have deposited in the office of the Secretary of State at Washington. *MS. Note.*

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is evinced by the [1]charter of Louis XIV. to Crozat, bearing date the 14th of Sept. 1712. The VIIth article of that is in these words. "Our edicts, ordinances and customs, and the usages of the Mayorality and Shreevalty of Paris, shall be observed for laws and customs in the said country of Louisiana." The customary law of Paris seems to have been selected, because considered as the best digest, and that to which it was proposed to reduce the customary law of all the provinces. Enc. Meth. Jurispr. Coutume. 405. This is the first charter we know of which established the boundaries and laws of Louisiana. It says nothing of the Roman law; but that, having become incorporated, by usage, with the customs of Paris, and constituting, as a supplement, one system with them, seems to have been considered as of their body, and transferred with them to Louisiana.[2] In 1717, Crozat transferred his rights to the

[1] The only copy of this Charter I have ever met with is in Joutel's Journal of La Salle's last voyage. An application was made by the government of the United States, through their minister at Paris, to the government of France, for permission to have the original of this charter sought for in their Archives, and an authentic copy obtained. The application was unsuccessful. We must resort, therefore, to this publication, made in 1714, two years after the date of the patent, under the rule of law which requires only the best evidence the nature of the case will admit. For although we may not appeal to books of history for documents of a nature merely private, yet we may for those of a public character, e. g. treaties, etc., and especially when those documents are not under control, as when they are in foreign countries, or even in our own country, when they are not patent in their nature, nor demandable of common right.

[2] If it be objected that the incorporation of the Roman law with the customs of Paris, and their joint transfer to Louisiana does not appear,

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Compagnie d'Occident, at the head of which was the famous Law, 8. Raynal. 166. [edit. 1780.] which again in 1720, by union with others, became the Compagnie des Indes, who in 1731, surrendered the colony back to the king. 1. Valin, 20. But these various transfers from company to company, of the monopoly of their commerce, for that was the sum of what was granted them, and their final surrender to the king, could not affect the rights of the people, nor change the laws by which they were governed. When they returned to the immediate government of the king, their laws passed with them, and remained in full force until, and so far only as, subsequently altered by their legislator. That this was the sense of their government may be inferred from a clause in

I answer, 1. At the date of Crozat's charter, the Roman law had for many centuries been amalgamated with the customary law of Paris, made one body with it, and its principal part. By the customs of Paris were doubtless meant the laws of Paris, of which the Roman then made an important part, and might well be understood to be transferred with them. It was hardly intended that the new colonists were to unravel with this web, and to take out for their own use only the fibres of Parisian customs, the least applicable part of the system to their novel situation. 2. If the term, coutumes de Paris in the charter be rigorously restrained to its literal import, yet the judges of Louisiana would have the same authority for appealing to the Roman as a supplementary code, which the judges of Paris and of all France had had; and even greater, as being sanctioned by so general an example. 3. The practice of considering the Roman law as a part of the law of the land in Louisiana, is evidence of a general opinion of those who composed that state, that it was transferred, and of an opinion much better informed, and more authoritative than ours can be. Or it may be considered as an adoption, by universal, though tacit consent, of those who had a right to adopt, either formally, or informally, as they pleased, as the laws of England were originally adopted in most of these states, and still stand on no other ground.

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the edict creating the Compagnie des Indes Occidentales, art. 34.

"Seront les juges établis en tous es dits lieux tenus de juger suivant les lois et ordonnances du royaume, et les officiers de suivre et se conformer à la coutume de la Prevôté et vicomté de Paris, suivant laquelle les habitans pourront contracter, sans que l'on y puisse introduire aucune autre coutume, pour éviter la diversité." 1. Moreau de St. Mery, 100.

"The judges established in all the said places shall be held to adjudge according to the laws and ordinances of the kingdom, and the officers to follow and conform themselves to the customs of the Prevoté and vicomté of Paris, according to which the inhabitants may contract, without that any other custom may be introduced, to avoid diversity." 1. Moreau de St. Mery, 100.

This then is the system of law by which the legal character of the facts of the case is now to be tested: and the plaintiff and his counsel having imagined that, in the Roman branch of it, they had found a niche in which they could place the batture to great advantage, have availed themselves of it with no little dexterity and by calling it habitually an alluvion, have given a general currency to the idea that it is really an alluvion: insomuch that even those who deny their inferences, have still suffered themselves carelessly to speak of it under that term. Were we, for a moment to indulge them in this misnomer, and to look at their claim as if really an alluvion one, the false would be found to avail them as little as the true name. The Roman law indeed says, "quod per alluvionem agro tuo flumen adjecit, jure gentium, tibi adquiritur." "What the river adds to your field by alluvion, becomes yours by the law of

Alluvion.

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nations. Institute. L. 1. tit. 1. § 20. Dig. L. 41. tit. 1. § 7. The same law, in like manner, gave to the adjacent proprietors, the sand bars, shoals, islands rising in the river, and even the bed of the river itself, as far as it was contracted or deserted. Inst. 2. 1. 22. and 2. 1. 23. But the established laws of France differed in all these cases.

"Par notre droit Français, dit Pothier, les alluvions qui se font sur le bord des fleuves, et des rivières navigables, appartiennent au roi. Les propriétaires riverains n'y peuvent rien prétendre, à moins qu'ils n'ayent des titres de la concession que le roi leur aurait faite du droit d'alluvion." 1. Pothier. Traité de la propriété. 1 Part. c. 2. § 3. art 2. No. 159.

"By our French law, says Pothier, one of their most respected authorities, the alluvions formed on the borders of navigable streams and rivers belong to the king. The proprietors of riparian heritages can have no claim to them, unless they have evidences of the grant made to them by the king, of the right of alluvion along their heritages." Pothier, Part 1. c. 2. § 3. art. 2. No. 159. cited Derbigny, xviii.

And Guyot, in the Répertoire Universel de Jurisprudence, a work also of authority and cited with approbation by the plaintiff and his counsel, [Liv. 21. Du Ponceau, 14.] under the word "île," says,

"Nous n'admettons pas comme les Romains, les alluvions, et les accroissemens, au profit des propriétaires riverains, soit par les changemens qui peuvent survenir dans le lit des rivières, soit relativement aux îles, et îlots qui peuvent s'y former. Chez eux le lit, et les bords des fleuves et rivières étaient censés faire partie des héritages riverains; et par une suite de ces maximes, le terrain

"We do not admit, as the Romans, alluvions and accumulations to go to the riparian proprietors, either by changes which may happen in the bed of rivers, or relating to isles, and islets which may there be formed. With them the bed and borders of rivers and streams were considered as making part of the riparian inheritances; and as a consequence of these maxims, the

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qu'un fleuve ajoutait à ces héritages, appartenait à ceux qui en étaient propriétaires. Ils réunissaient de même à leurs possessions le lit que le fleuve abandonnait; et lorsqu'il se formait une île dans le milieu de son lit, les riverans y avaient un droit égal, et en partageaient la propriété. Suivant nos principes, les rivières navigables, leur lit, rives, et tous les terrains qui peuvent s'y former, appartiennent au roi, à raison de sa souveraineté. C'est la disposition précise de l'article 41. du tit. 37 de l'Ordonnance des eaux et forêts de 1669, qui a dissipé tous les doutes que l'on cherchait à faire naître dans plusieurs provinces, sur les fondemens des énonciations qui se rencontraient dans les anciennes concessions."

earth which a river added to these inheritances, belonged to those who were the proprietors of them. They reunited in like manner to their possessions the bed which a river abandoned, and when an isle was formed in the middle of its bed, the riparians had an equal right to it, and divided the property. According to our principles, navigable streams, their bed, banks, and all the grounds which may be formed there, belong to the king, in right of his sovereignty. It is the precise provision of art. 41. tit. 37. of the Ordonnance des eaux et forêts, which has dissipated all the doubts which they had endeavored to raise in several provinces, on the grounds of the enunciations which were found in the ancient concessions." Cited Derbigny 23.

Again, after laying down the Roman law of alluvion, and of islands formed in the beds of rivers, Le Rasle, in the law Dictionary, forming a part of the Encyclopédie Méthodique. Jurisprud. accession. 94, says,

"Nous n'avons pas suivi dans notre droit Français les dispositions Romaines à cet égard; toutes les isles ou autres attérissemens qui se forment dans les rivières appartiennent au roi, et font partie du d maine. Les terres ajoutées par alluvion aux héritages baignés par le fleuve et les rivières navigables, n'appar-

"We have not in our French law followed the Roman provisions in this respect; all islands or other accumulations which are formed in rivers, belong to the king, and constitute a part of the domain. Lands added by alluvion to inheritances washed by rivers and navigable streams, do not belong to the riparians, but

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tiennnent aux riverains, que lorsqu'ils ont un titre de concession qui leur permet de se les approprier."

when they have a deed of concession which permits them to appropriate them to themselves."

And Ferriere, quoted also by the plaintiff, says,

"Pour ce qui regarde l'augmentation arrivée à un héritage subitement et tout d'un coup, la décision que les loix Romaines ont faites à cet égard n'est point observée dans le royaume. Cette augmentation appartient au roi, dans les rivières navigables." And Denizert agrees, "que les attérissements formés subitement dans le mer, ou dans les fleuves ou rivières navigables, appartiennent au roi, par le seul titre de sa souveraineté."

"As to augmentations happening suddenly and all at once, the decision of the Roman laws in this respect, is not observed in the kingdom. These augmentations belong to the king in navigable rivers." And Denizert agrees, "that atterrissements formed suddenly in the sea, or the navigable rivers or streams, belong to the king in the sole right of his sovereignty."

And he refers to the edicts of 1683, 1693, and 1710. And to put aside all further question as to the law of France on this subject, Louis XIV. by an edict of December 15, 1693, says,

"Louis, etc. salut. Le droit de propriété que nous avons sur tous les fleuves et rivières navigables de notre royaume, et conséquemment de toutes les isles, moulins, bacs, etc. attérissemens et accroissemens formés pas les dits fleuves et rivières, étant incontestablement établi par les lois de l'état, comme une suite et une dépendence nécessaire de notre souveraineté, les rois nos prédecesseurs et nous, avons de tems en tems,

"Louis, etc., Greeting. The right of property which we have in all rivers and navigable streams of our kingdom, and consequently in all the isles, mills, ferries, etc., accumulations and increments formed by the said rivers and navigable streams, being incontestibly established by the laws of the state, as a necessary consequence and dependence of our sovereignty, the kings, our predecessors, and ourselves, have from

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ordonné des recherches des isles et crémens qui s'y sont formés, etc. A ces causes, de l'avis de notre conseil et de notre certaine science, pleine puissance et autorité royale, nous avons par ces présentes, signées de notre main, dit, statué et ordonné, disons, statuons et ordonnons, voulons et nous plait, que tous les détenteurs, propriétaires, ou possesseurs des îles, flots, attérissemens, accroissemens, *alluvions*, droits de pêche, péages, ponts, moulins, bacs, coches, bateaux, édifices et droits sur les rivières navigables de notre royaume, qui rapporteront des titres de propriété ou de possession, avant le 1er Avril, 1566, y soient maintenus et conservés dans leurs possessions, en payant au fisc une année, et ceux sans titre, ni possession antérieurs au 1er Avril, 1566, en payant deux années de revenu."

time to time, ordered inquiries as to isles and increments therein formed, etc. For these causes, with the advice of our council, and of our certain knowledge, full power and royal authority, we have by these presents, signed with our hand, declared, enacted and ordained, and we do declare, enact and ordain, we will, and it is our pleasure that all the holders, proprietors, or possessors, of isles, islets, accumulations, increments, *alluvions*, rights of fishery, tolls, bridges, mills, ferries, packets, bateaux, edifices and imposts on the navigable rivers of our kingdom which shall produce titles of property or of possession before the 1st of April, 1566, shall be therein maintained and secured in their possessions, on paying to the treasury one year's revenue, and those without title papers, or possession prior to the 1st of April, 1566, on payment of two years' revenue."

Having no copy of this Ordinance, I quote it from Mr. Derbigny, p. 20. Duponceau, p. 10, and l'Examen de la Sentence, p. 8, by putting together the parts they cite, for neither gives the whole of what I have cited. Other respectable authorities might be produced, to the same effect, were it necessary to multiply them: and it is also admitted that authorities of weight, and of a different aspect exist, among these is Dumoulin, as respectable as Pothier, Guyot, or any other who has been cited. Were it absolutely in-

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cumbent on me, more than on those who rely on the contrary authorities, to assign reasons for a difference of opinion among lawyers, on any point, it might be ascribed in this case to a difference of impression from views on the same subject, diversified as were the customs of the various provinces of France, on this very point. Dumoulin wrote a century and a half before the Ordinance of Louis XIV. In that course of time printing had become more diffused, books greatly multiplied, and a more correct collation of these customs could be made. So that had Dumoulin written in the days of Pothier and Guyot, and with their advantages, he would probably have concurred in the preceding observation, that, "if there were any doubts, this Ordinance has dissipated them." Be this as it may, Louis XIV. and his council have decided between these two opinions, and if it were not law before, his decision made it so. By this edict he declares the law of France, "incontestably," to be that "*Alluvions* belong to the king in all navigable rivers." But with a spirit of indulgence, meriting more respect than he has found in the language of the adverse party who dislike the truths he has declared, he confirmed all anterior usurpations, on payment of certain compositions and future rents, re-establishing, by the example, the authority of the laws, and rights of the crown against these usurpations. This Ordinance was passed nineteen years before the charter to Louisiana, and consequently was comprehended among the edicts

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and ordinances originally established as the law of the Province.

Mr. Livingston and his advocates have asserted that the right to the beds and increments of rivers, is a gift of the feudal system to the sovereign, that is, to the nation, and is a peculiarity of that system: and further, that that system was never introduced into Louisiana. That the latter assertion is palpably erroneous, could be readily shown, were not the question altogether unnecessary. With respect to the former, surely it is putting the cart before the horse to say, that the authority of the nation flows from the Feudal system, instead of the Feudal system flowing from the authority of the nation. That the lands within the limits assumed by a nation belong to the nation as a body, has probably been the law of every people on earth at some period of their history. A right of property in moveable things is admitted before the establishment of government. A separate property in lands not till after that establishment. The right to moveables is acknowledged by all the hordes of Indians surrounding us. Yet by no one of them has a separate property in lands been yielded to individuals. He who plants a field keeps possession till he has gathered the produce, after which one has as good a right as another to occupy it. Government must be established and laws provided, before lands can be separately appropriated, and their owner protected in his possession. Till then the property is in the body of the nation, and they, or

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their chief as their trustee, must grant them to individuals, and determine the conditions of the grant. In certain countries, they have granted them on a system of conditions and principles which have acquired the appellation of Feudal. Surely then it is the sovereign which has created the Feudal principles, and not these principles which have created the rights of the sovereign. The Edinburgh Reviewers, [No. 30. 339. Jan. 1810.] who in the progress of their work have deservedly attained a high standing in the public estimation, reviewing the condition of land-tenures among the Hindoos, say, "the territory of the nation, belonging in common to the nation, belongs, in this general sense, to the king, as the head and representative of the nation. As far accordingly as we have sufficient documents respecting rude nations, we find their kings, *without perhaps a single exception*, recognized as the sole proprietors of the soil. And they quote as their authorities,

In Europe.

For Wales, Leges Walliæ. c. 337.

Great Britain. The Bretons while they held the whole island, Turner's Anglo Saxons, c. 3.

Gaul and Germany. Cæsar, 4. 1. To which add Spain, Portugal, Italy, and all feudal states.

In Asia.

For China. Barrow. 397.

India. Montesq. Sp. L. 14. 6. Scott's Ferishta, vol. 148—495. 2. Bernier, 189.

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Persia. 3. Chardin, 340. Syria and the Turkish dominions. 2. Volney, 402.

In Africa.

For Egypt. Herodot. 2. 109. Volney passim.

Others part of Africa. 4. Hist. gen. des voyages 13. v. do. 7. 5. 17. Mod. Univ. Hist. 322. Parke, 260.

In America.

For the Spanish part. Acosta 6. 15. and 18. Garcilaso, 1. 5. 1. Carli. letter 15.

For the United States and the Indian hordes of our continent, we cite our own knowledge.

It seems then to be a principle of universal law that the lands of a country belong to its sovereign as trustee for the nation. In granting appropriations, some sovereigns have given away the increments of rivers to a greater, some to a lesser extent, and some not at all. Rome, which was not feudal, and Spain and England, which were, have granted them largely; France, a feudal country, has not granted them at all on navigable rivers. Louis XIV. therefore was strictly correct when in his edict of 1693, he declared that the increments of rivers were incontestably his, *as a necessary consequence of the sovereignty*. That is to say, that where no special grant of them to an individual could be produced, they remained in him, as a portion of the original lands of the nation, or as new-created lands, never yet granted to any individual. They are unquestionably a regalian, or

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national right, paramount, and pre-existent to the establishment of the feudal system. That system has no fixed principle on the subject, as is evident from the opposite practices of different feudal nations. The position, therefore, is entirely unfounded, that the right to them is derived from the feudal law; and it is consequently unnecessary to go into the proof of what the grants in that country exhibit palpably enough, that infeudations were partially at least, if not generally, introduced into Louisiana.

It ought here to be observed however that, so far as respects the beds and navigation of rivers, the right vested in the sovereign is a mere trust, not alienable. It is not like lands, imposts, taxes, an article of public property constituting the revenues of the state, but like roads, canals, public buildings, reserved for the use of the individuals of the nation. See an explanation of this subject, Vattel 1. 235. 239.

I have now to advert, and I do it with extreme regret, to a passage in the very able Memoire of M. Thierry, a Memoire conspicuous for its learning and sound reasoning, and to which I acknowledge myself peculiarly indebted for information on the points he has discussed. He says, p. 30, "To the ancestors of John Gravier the right of alluvion belonged not only by virtue of the Coutumes de Paris, which for two centuries back acknowledged the principle of the Roman law, and against which, for that reason, the Ordinances of the kings of France could with no manner of success be

M. Thierry.

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pleaded, inasmuch as a royal ordinance specially made that Coutume the civil law of this colony; but also by virtue of the Spanish laws, which from 1769, have been constantly in force in Louisiana." 1. That the Roman principle of Alluvion was acknowledged by the Coutumes de Paris has not been proved. The adverse counsel, [Dupon. p. 9.] has said indeed, that those Customs were silent on this subject. But I have considered Pothier, Guyot, and Le Rasle as better authority. 2. Mr. Thierry supposes that a Royal Ordinance having specially made that Coutume the civil law of Louisiana, the Ordinances of the kings of France were excluded from the system, and could not control what was Coutume. He had not, I presume, seen the charter of 1712, which makes the edicts and *ordinances*, with the Coutume de Paris, the law of that province; nor sufficiently considered that had the Coutumes been alone established by one ordinance, another might change them. 3. He supposes the Spanish laws have given Alluvions to the riparian proprietor. But the laws of the province, established by their charter, were not annulled by the change of one king for another, as their legislator. The latter might change them. But has he done so? If he has, his edict must be produced, that we may weigh its words, and judge of its effects for ourselves. And we must guard against admitting that the example of a Spanish Governor, if such example has occurred, occasionally and incorrectly acting on the laws of Spain, amounted to a repeal

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of the whole system then existing, and a formal establishment of a different one. No such intention on his part, to make so momentous a change, should be so slightly inferred; and no power of his could effect it, even if intended. Nothing less than an Ordinance of the Sovereign himself, signed with his own hand, and sanctioned by all the solemnities attending their enactment and promulgation, was competent to reverse at once the legal condition of a whole people, and the laws under which their lives and properties were held. Again, even such an ordinance could not change the law as to past rights; and those now in question were vested before the Spanish government took place, and could not be annulled by a subsequent law. These gratuitous admissions, therefore, of Mr. Thierry, not at all necessary to his argument, and therefore probably not well considered, and in opposition to the opinions and demonstrations of an able brother counsellor (Mr. Derbigny), must be disavowed, and the authority of the Ordinance of 1693 insisted on with undiminished confidence. Mr. Thierry himself will perhaps the more readily abandon them, when he sees with what avidity his eagle-eyed adversary has pounced upon them in a letter to some member of the government, in which he considers them as giving up all ground of opposition to his claims.

Edict of Louis XIV.

To that edict then I shall now recur; and to the cavils raised against it by the advocates of the claims it annihilates. It is idle

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for them to call it bursal, fiscal, and the act of a tyrant, etc. [Duponc. 10.] as if the authority of laws was to be graduated by the character of the existing legislator; and as if we were to be the judges, for other nations, of the character and obligation of their laws. It is vain to pretend that because the word "Alluvion," inserted in the enacting clause of the edict, is not in the preamble, therefore it has no force in the body of the law: as if the preface, giving the general reason and views of the law, was alone to be the law, and its actual enactments a mere nullity. Although the preamble of a statute is considered as a key to open the mind of the makers as to the mischiefs in their view, yet in general it is no more than a recital of some inconveniences, which does not exclude any other for which the enacting clauses provide; nor must the general words of an enacting clause be restrained by the particular words of the preamble. 6. Bac. Abr. Statute. I. 2. and the authorities there stated. So says our law; so says reason; and so must say the Roman law, if it be ratio scripta. But it is further to be observed that the words "attérrissements and accroissements," accumulations and increments, used in this preamble are generic terms, of which "Alluvion" is a species, and therefore strictly comprehended by it. This is proved by the Roman definition, "Alluvio est *incrementum* latens," "alluvion est un accroissement ou crement imperceptible," by the Napoleon code cited by Mr. Livingston:

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Napoleon Code.

"Les attérissements et accroisements qui se forment successivement et imperceptiblement aux fonds riverains d'un fleuve, ou d'une rivière, s'apellent Alluvion." § 556.

"The accumulations and increments which form themselves successively and imperceptibly against the riparian lands of a river or stream are called Alluvion." Sect. 556.

Portalis.

And by the edicts of 1686 and 1689, both of which have the expression "*cremens* qui s'y sont formés, soit par *alluvion*, ou par industrie, etc. And here Portalis's rhetorical flourish, on presenting this law, is cited, [Duponc. 17. Liv. 22.] with triumph, as declaring that this law terminates the great question of Alluvion, and decides it conformably to the Roman law. It is very true indeed that it has terminated the question as to future cases, by changing the law, by transferring the right of Alluvion from the sovereign to the riparian proprietor, by giving the abandoned bed of a river, as an indemnification to him on whose land it has opened a new passage, and making this the future law of all the provinces. And had Louisiana then been subject to France, the law would have been changed *thenceforward*, for Louisiana also. I find no fault with Napoleon for this Roman predilection. I believe the change is for the better, so far as concerns rural possessions. A decision too of the parliament of Bordeaux is quoted by Mr. Duponceau 19. to prove that the law giving Alluvion to the adjacent possessor has been acknowledged in France by the decision of the parliament of

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Bordeaux, confirmed, *as he has heard*, on appeal by the parliament of Paris. This proves only that the Roman law of alluvion was the law of the Generality of Bordeaux, not that it was then the law of all France. In the country called the Bordelois, Customary laws prevail. But

"Lorsque la coutume de Bordeaux ne s'est pas expliquée sur certains points de droit, ce n'est ni à la coutume de Paris, ni à d'autres coutumes qu'on a recours pour les faire décider, mais au droit écrit." Enc. Meth. Jurisp. Bordeaux."

"When the Custom of Bordeaux has not sufficiently explained itself on certain points of law, it is neither to the Customs of Paris, nor to other customs that recourse is had for decision, but to the written law," [that is, the Roman law.]

The inference then is, either that the Coutume de Bordeaux was the same on this point as the Roman law, or, that being silent, the Roman law was referred to.[1]

Surely never was the urgency of squeezing argument out of everything so apparent, as in the emphasis with which the adverse party presses and comments, [Liv. 32.] on the answers of the several tribunals, to which the Napoleon Code was referred for consideration and amendment. A dozen tribunals are named, with an etc. for more, who are acknowledged to have said nothing about alluvion: and this is produced as proof that it had belonged before to

[1] M. Moreau de Lislet assures us that he was in Paris at the time of the decision of this appeal from Bordeaux, that the decision of Bordeaux was reversed by the king and council, then referred to the Parliament of Paris, and the reversal confirmed by that body. See his Memoire, 50.

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the riparian proprietor. But it proves more probably that these tribunals were contented with the change proposed, and had no amendment of it to offer. But, in truth, it proves nothing either the one way or the other. The tribunal of Paris is then quoted, with an acknowledgment that they do not make a single observation on the subject. Then long extracts from that of Rouen, proposing that *islands*, rising in the rivers, shall be given to the riparian proprietors: and recommendations to the same effect from those of Toulouse and Lyons. Now it is remarkable that neither the word "Alluvion," nor the idea of the thing, is either expressed or referred to in any one of these quotations. And yet Mr. Livingston says, "we find all these learned men either passing over these articles, as merely declaratory of the old law, or else *expressly acknowledging them* as such;" and again after the citation from Rouen, "here we have the positive declaration of a learned tribunal, etc., deciding that the edicts did not extend to alluvions, but only to islands in navigable rivers." And yet I repeat that neither the word nor the idea is to be found in any one of the quotations; for it is of these only I can speak, not possessing the book, but I presume Mr. Livingston's quotations are of the strongest passages. It is impossible to characterize such reasoning respectfully. I shall therefore leave it to the reflection of others. And I think myself authorized to conclude on the whole, that had the Batture been really an Alluvion, its ownership was

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to be decided by the laws of France: and that Louis XIV. with the advice of his council, certainly knew when they declared what the law of their country "incontestably" was; and if we, with our scanty reading on the subject, at this day and distance, know better than they did, yet the enacting clause of the edict made it the law *thenceforward;* that it came over as law for Louisiana, made the batture, if an alluvion, the property of the sovereign; and certainly the whole tenor of the conduct of the Spanish government proved that they did not mean to relinquish it.

Before we quit this branch of the discussion, it is not amiss to observe that the eloquent declamations of these learned men of Rouen, so much eulogized by Mr. Livingston, were not at all heeded. The Napoleon code, § 560, retained the *islands* rising in the beds of navigable or floatable rivers, and (changing the French law only as to alluvions) declares, § 538, in opposition to the Roman law, that

"Les fleuves et rivières navigable ou flottables, les rivages, lais et relais de la mer, les ports, les havres, les rades, etc., sont considérés comme le dépendances du domaine public."

"Rivers and navigable or floatable streams, shores, increments, and decrements of the sea, ports, harbors, roads, etc., are considered as dependances of the public domain."

So that notwithstanding the "persuasive and conclusive arguments of these first lawyers of the country," Liv. 31, the French law as it stands at this day, and stood before, would have given the batture to the

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public, being unquestionably the [1]rivage of shore or the river.[2]

[1] "Rivage, is most commonly used for the shore of the *sea*, but correctly also for the shore of a river.

"Chaque fleuve, chaque ruisseau
A partout franchi son rivage." Regnier. Dict. de Richelet. Rivage
"Le Tybre écumeux et bruyant
De sa course fougueuse étonne son rivage." St. Evremont.

It is particularly so used in Law. "Sous le nom de *rivage* est compris le chemin qui hoit être entretenu le long des côtes et rivières navigables, pour le hallage des bateaux." And again, "droit de rivage, qui est du sur les marchandises qui abordent au rivage de la ville de Paris." Dict. de Trévoux, Rivage. "Sur le rivage de la Seine" Dict. de l'Académie.

[2] Little versed in French jurisprudence, possessing few of the authors teaching it, and, of some of those quoted by the adverse party, so much only as they have thought to their advantage to quote, I had apprehended it possible (pa. 29.) that there might be among those authors, that conflict of opinions on the law of alluvions, which these quotations indicate. But I have lately had an opportunity of reading in MS. a Memoire on the subject of the Batture, written by M. Moreau de Lislet of New Orleans, a French lawyer of regular education in the profession, who has treated the subject, generally with great learning and abilities, and especially that branch of it which relates to the laws of France in cases of Alluvion. He has proved that the doctrines of these great authorities are not contradictory, and that a proper attention to the different questions under contemplation in the passages quoted, will show that all are right, and all in perfect harmony. To elucidate this he explains certain principles of French law, which mingling themselves with this subject, have occasioned the misunderstanding with which we have been perplexed. 1. The laws of France leave to the king a right to *navigable* rivers only, and their increments. On rivers *not navigable*, the rights of the riparian proprietor prevail as under the Roman law. See Pothier ante. pa. 26. Very early, however, these rights were drawn into question by the Feudal Superiors, who, looking to the example of the king in the case of *navigable* rivers in his kingdom, claimed similar rights on those *not navigable* within their Seignories. But repeated decisions have condemned their claims, and confirmed the rights of the riparian tenant. 2. By the laws of France, as by those of England, lands received by inheritance, descend, on the death of the tenant, to the heirs of that branch, paternal or maternal,

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I will now proceed further and say, that had the batture been an alluvion, and to be decided by the

from which they came to him. But those he acquires by purchase (acquets) pass to that line of heirs of which himself is the root. When therefore, to a maternal inheritance an acquisition happened to be made by means of Alluvion, a question would arise, between heirs of different lines, to which of them the Alluvion would descend; whether to the direct heirs of the decedent, as being an acquisition first vesting in him, or to the maternal heir as an accessory to his inheritance. The decisions were that it united with the inheritance, became a part of that, and passed with it. "Incrementum alluvionis nobis adquiritur, jure quo ager augmentatus primum ad nos pertinebat; nec istud incrementum censetur novus ager sed pars primi." "The increment of Alluvion is acquired to us in the right in which the field augmented first belonged to us." Nor is the increment considered as a new field, but a part of the first, Renusson. It follows that questions of Alluvion would often arise in cases wherein the king's rights were not at all concerned. They would arise between Lord and vassal, and between individual heirs of different lines. These explanations premised, M. Moreau takes a review of the passages quoted from Henrys, Bourjon, Dumoulin, Ferriere, Pothier, Le Rasle, Renusson, Dargentré, Denisart, and Guyot, and shews that in every instance where the question concerned a *navigable* river, there was no division of opinions as to the validity of the king's right; and that in every instance where the riparian right is asserted, the question has been between private individuals, or concerning rivers *not navigable*. Recurring then to the edicts and Ordinances placing this right of the king beyond cavil, he observes that a practice had prevailed from early times among riparian proprietors of usurping on the rights of the crown to the increments adjacent to them, and a necessary reaction of the crown, by reclamations and resumptions, to preserve its own. And he gives a detail of the edicts on this subject, proving that that of 1693, instead of being the singular act of a particular prince, whom the adverse party delights to revile, was one only of a long series preceding and following it.

1554. An edict was issued requiring the proper officers to be vigilant in watching over the king's rights in islands, attérissements, et *alluvions*, comme ils l'ont accoutumés faire d'ancienneté.' So that it was even then a law and practice d'ancienneté, and expressly including *alluvions*.

1664. An Ordinance for making enquiries concerning islands, accroissements, etc.

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Roman, instead of the French law, the conversion of the plantation of Gravier into a suburb, made it pub-

1668. Apr. An Edict quieting possessions of these objects of 100 years continuance, on paying a vingtième annually.

1669. The Ordinance des eaux et forêts, "qui accorde au roi la propriété de toutes *les rivières navigables*, de leur lit, *rives*, et de tous les terreins qui peuvents s'y former." Guyot, ante. pa. 27. "granting to the king the property in *all navigable rivers*, their bed, *banks*, and the grounds forming there."

1683. Apr. A declaration, reciting that as the rivers belong to the king "tout ce qui se trouve renfermé dans leur lit, comme les isles, accroissemens et attérissements lui appartient aussi," confirms *title* anterior to 1566 without condition, possessions anterior to 1566 on conditions, and reunites all others to the crown.

1686. Apr. } Two edicts for Languedoc and Bretagne, confirming pos-
1689. Aug. } sessors in the said islands, "ensemble des crémens qui s'y sont formés, et de ceux qui pourraient s'y former à l'avenir, soit par *alluvion*, on par industrie."

1693. An edict general for the kingdom "le droit de propriété que nous avons *sur tous les fleuves et rivières navigables* étant incontestable, etc. Ordonnons que les détenteurs des isles, islots, attérissemens, accroissemens, alluvions, etc. *sur* les *rivières navigables*, etc., as more at large, pa. 28.

1710. Feb. An edict confirming possession of islands, etc., of the sea on specified terms, copied almost verbally from that of 1693, using the word *alluvions* as that does, and referring to the provisions of that edict.

1722. Sep. An Arret resuming isles, attérissemens, etc., formed since the edict of 1693. And those of anterior formation where the possessor has not made the payments provided by the edict of 1693.

But this whole branch of the argument of M. Moreau must be read with attention. Its matters cannot be abridged, nor otherwise expressed, but for the worse.

Having thus luminously reconciled the authorities which had been so illy understood, and victoriously established the public right to alluvions on *navigable rivers*, M. Moreau, with too much facility, gives back to his adversary one-half the ground he has conquered, by a gratuitous admission, which those interested in the event of the cause are not ready to confirm. Led away, as it seems, by an expression in

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lic property. And here I rejoin with pleasure the standard of M. Thierry, and avail myself of his lumi-

the edict of 1683, "tout ce qui se trouve renfermé *dans leur lit* nous appartient," and which is to be found in no other, and yielding to a single decision of the Parliament of Paris of 1765, found in a law dictionary, which adjudged that the Ordinances giving to the king the isles which are formed "*dans le lit*," des fleuves et rivières navigables, ne lui donnent pas les attérissements et *alluvions* qui peuvent se former *hors* le lit de ces mêmes fleuves," etc. He admits that though alluvions *within* the bed of a river belong to the king, those *without* the bed do not belong to him. M. Moreau is too reasonable to consider as a compliment to himself the adoption of an opinion on his authority alone, by any one not convinced by his reasonings. Certainly I do not feel myself competent to enter the lists with him, on any question of difficulty in the French law. Yet after maturely considering the authorities appealed to in this case, and which he has rendered so strong by reconciling and forming them into one mass, I cannot yield, as he does, so imposing a mass to a single decision of the single Parliament of Paris. I still must consider all alluvions on *navigable rivers* as belonging to the nation, and will briefly assign my reasons.

1. It is of the essence of *Alluvion* that it be, not *in* the bed of the river, but *out* of it; that is, adjacent to the bank. So say expressly the Roman and French definitions. "Alluivo est incrementum *agro* tuo flumine adjectum." "l'Alluvion est un accroissement de terrein qui se fait *sur les bords* des fleuves, par les terres que l'eau y apporte, et qui se consolident pour ne faire *qu'un tout avec la terre voisine*." Ante. pa. 26. Increments *within* the bed of a river, though sometimes carelessly spoken of under the term *alluvion*, are never so in correct language, never in the well weighed diction of ordinances and statutes. They are termed accroissements, attérissements, assablissements, isles, islots, javeaux, in French, and in our language shoals, shallows, flats, bars, islands. *Without* the bed of the river, they add to the beach, or to the adjacent field, according to their elevation, and in this last case only, constitute *Alluvion*, *within* the bed of the river they lose that name.

2. "Les alluvions qui se forment *dans* le lit des fleuves" is not the language of the edicts cited by Moreau himself, not even of that single one on which this opinion is founded. That has indeed the expression "dans les lits," but applied, not to alluvions, but to isles, accroissements, attérissements, to which it is applicable with truth and correctness. These are the kinds of increments it enumerates, and describes

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nous discussion of this point. Were I fully to go into it, I could but repeat this matter. I shall therefore

as being "dans le lit." If they are enumerated *exempli gratiâ* only as the word *comme* seems to imply, and alluvions, though not named, were within the purview, as they are within the reason of the law, then, if the thing itself is to be understood, as if expressed in the text, its true description also is to be undertood as if expressed, that is to say, its adjacence to the bank. The edicts of 1686 and 1689 mention "les isles des rivières navigables, ensemble les crémens qui *s'y* sont formés." That of 1693 says, in like manner, "le droit, etc., *sur* tout les fleuves, et les isles et crémens qui *s'y* sont formes," and again, "isles et alluvions *sur* les rivières navigables," not "*dans leurs lits.*" That of 1710 says "possession des isles et *alluvion sur* les dites rivières." Thus we see that wherever the edicts mention *alluvions*, they dsecribe them *sur* le fleuve, not *dans le lit* du fleuve. When they speak of those increments which are *dans le lit* des fleuves, they name them as accroissemens, atterissemens, etc., but not as *alluvions*.

3. This distinction is founded on a single decision of a single parliament, and on the authority of a king's advocate, Bacquet, and the dictum of Salvaing there cited, all perhaps influenced by the same and single expression in the edict of 1683. It is cited too from a Dictionary by Prost de Royer, where it is doubtless stated in abridgment only, and possibly with the omission of circumstances, arguments, and expressions which, were they before us, would change the aspect of the case, as M. Moreau himself has shown to be so possible in his review of the mutilated authorities produced by the adversary. And are we, for this, to give up the doctrines of Pothier, Denisart, Ferriere, and the host of other great authorities, and all the definitions of the Roman and French laws, all of which when speaking of *alluvions*, place them exclusively on the borders, and not in the beds of rivers? I cannot do it.

4. This distinction is new in this cause, having never been claimed by the plaintiff or his counsel, or suggested by any other who has treated the question. This naturally begets a suspicion that it is peculiar; though doubtless the adversary will adopt it with avidity. And is he entitled to this gratuitous aid? Is it the equity of his cause, or even its honesty, or its utility, which gives him this claim on our tenderness? I cannot consent to a concession which gives the Batture from the public in the contingency of its being considered as a real alluvion, consolidated with, and making part of, the adjacent field. On the contrary I insist on the public right in this case also, under the

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give but a summary view of it, and rest on his argument for its more detailed support.

Rural and Urban

The position laid down is that the Roman law gave alluvion only to the rural proprietor of the bank; urban possessions being considered as prædia limitata, limited possessions. The law which gives this right is expressed in the Insti-

laws of France, as hitherto understood, and as declared by her highest authorities.

5. I adhere to this ground the more firmly, because I observe, from another part of his Memoire, pa. 99, that M. Moreau himself seems not very decided in this new opinion. After stating the mischief of Mr Livingston's works, he says, "it is to prevent a like abuse that the Roman and Spanish laws of haute police, which I have cited, are opposed to every species of works undertaken on the banks of rivers and navigable streams, the effect of which might be to extend the limits of riparian fields, compromising the public safety, and injuring the facility of navigation. It was with this view, and not to create fiscal resources for himself that Louis XIV. renewed the Ordinances which ascribed to the sovereign the property in rivers and navigable streams, and of whatever is contained in their bed. For if it be advantageous to navigation that the king should be proprietor of the islands which form themselves in navigable rivers, the same interest requires still more that he should be proprietor of the *alluvions* and increments formed *along the shore itself*, since any ownership of these objects, except that of the sovereign, might oppose obstacles to the free landing on the shore, which every one ought to have, and to the use of it which the law gives to the public."

Considering this admission then, as doubted by M. Moreau himself on a second and sounder view of it, I conclude that the law is accurately laid down by Pothier [ante. pa. 26.] "By our French law, alluvions formed on the borders of *navigable* streams and rivers belong to the king. The proprietors of riparian heritages can have no claim to them, unless they have documents of the grant made them by the king, of the right of alluvion along their heritages. With respect to alluvions formed along the borders of a river *not navigable*, the property of which belongs to the proprietors of the neighboring heritage, the dispositions of the Roman law are to be followed."

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tutes in these words, "quod per alluvionem *agro* tuo flumen adjecit, jure gentium tibi adquiritur." Inst. 2. 1. 20. "What the river has added, *agro tuo*, becomes yours by the laws of nations." And the Digest 41. 1. 7. 1. in almost the same words says, "quod per alluvionem *agro* nostro flumen adjecit, jure gentium nobis adquiritur." In both instances it is to the possessor *agri* only that it is given. It becomes material therefore to understand rigorously the import of the word *ager*, in the Roman laws; and it happens that its definition is given critically by the same authority which uses it. "Locus sine ædificio, in urbe *area*, rure autem *ager* appellatur idemque *ager*, cum ædificio, *fundus* dicitur.' Dig. 50. 16. 211. "Quæstio est, fundus a possessione, vel agro, vel prædio quid distet?" Ib. 115 *in notis*, "fundus est ipsum solum: eo si utimur, prædium dicitur. *Ager* esse potest sine villa." "Ground, without a building, in a city is called *area*, but in the country *ager*." Pliny 1. 6. affirms that *ager* is derived from the Greek ἀγρὸς, of the same import. And in the Greek Pragmatics of Attaliata tit. 45. the law of alluvion uses "ἀγὸς" for ager. Τὸ ἀνεπαισθήτως διὰ τῆς ποταμῆς προσιεθὲν τὼ ἀγρῷ μῆ πρόσχωσις ἐςὶν ἤτοί πρόσκλυσις, καὶ ἐμοὶ ἁρμόζει." Quod insensibiliter τῇ ἀγρῷ μῆ per flumen adjectum est, alluvionis est, et mihi competit. "What is insensibly added by the river *agro meo* is alluvion [*adundatio*, *adaggeratio*] and belongs to me." In the same title "ὅπερ ἐν τῷ ἀγρῷσοῦ σπείρω σόν ἐςιν." "What I sow ἀγρῷ σῆ *agro tuo*, in your *field*, is yours." And Stephens, in

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his Thesaur. ling. Gr. voce "Ἀγρὸς" translates it "rus, ager," "ἐν ἀγρῷ in agro, ruri. Ἐξ ἀγροῦ, ex agro, rure. Εἰς ἄγρον, in, agrum, rus." And he cites examples: "Νηυς δέ μοι ἥδ' ἕστηκεν ἐπ' ἀγροῦ, νόσφι πόληος," Hom. Od. 1. 185. "My vessel is stationed in the *country*, apart from the city." "Διὰ τὸ μὴ μεγάλας εἶναι τότε τὰς ΠΟΛΕΙΣ, ἀλλ' ἐπὶ τῶν "ΑΓΡΩΝ οἰκεῖν τὸν δῆμον ἄσχολον ὄντα" Aristo. Polit. 5. "Because, the *cities* not being then large, the people were occupied in the *country*, where ἀγρὸς is proved to be pointedly the contradiction to πόλις, to wit, the *country* to the *city*. From these definitions it appears that the word *ager*, in the law, constantly means a field, or farm, in the country, and that a city lot is called *area*. In towns, the whole bank and beach being necessary for public use, the private right of alluvion would be inadmissible; and the adverse counsel have been challenged [Thierry, 33.] to produce a single instance, under the Roman law, of a claim of Alluvion allowed in a city. To this might be added a similar challenge as to the laws of England .These give alluvion on rivers, as the civil law does, to the riparian proprietor. Bracton L. 2. c. 2. § 1. Fleta. L. 3. c. 2. Can they from the volumes of English law, with which they are so much more familiar, produce one single instance of the private right of alluvion allowed in a city? In England, I mean, and not in America, where special circumstances have prevented attention to the law on this subject, or the breach of it. And this must be from the reason of the thing alone, because the common law never

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having been, like the civil law, reduced to a text, no verbal criticisms on a text can have co-operated against the claim.[1] Repeating, therefore, my refer-

[1] Since this was written, I have seen the case of Smart v. the magistrates, town council and community of Dundee, reported in 8 Brown's Reports of Appeals in parl. 119. This was an appeal from the court of Session in Scotland, to the H. of Lords. The crown of Scotland had in very ancient times, granted to the Corporation of Dundee, on the river Tay, the borough, with all the lands and pertinents, the privileges, profits, customs, ports, and liberties of the river on both sides, as freely in all respects as is possessed by the borough of Edinburgh over that of Leith, and in a word, as it seems, every right, power and trust which the crown could grant.—Smart, the proprietor of a lot bounded on one side per fluxum maris, or the sea flood, admitting that the sovereign, as trustee for the public, has a right to prevent all such appropriation of the sea shore, or the banks of navigable rivers as would impede navigation, render it dangerous or hurt the interests of commerce, either inland or foreign, and that all private persons or corporations, having a grant of a port and harbor, possess, to a certain extent, the same privileges as derived from the sovereign within a defined space, still he insisted on the right of the adjacent proprietor to ground gained from the sea by its recess, or by his own industry in embanking, or by any other opus manu factum, *not prejudicial to navigation or the established rights of others*. On the other hand the corporation claimed by their grant, a right to the seashore adjacent to the town, *in trust for the benefit of the community*, to make harbors, basons, and works for securing them, market places, wharves, wood yards, and other repositories for the accommodation of the trade, and, for these different works, to take in sites from the water by embankment, in short, as standing in place of the crown, that they succeeded to all the cares and powers of the crown, in the territory and its waters, for the public good; and, for that object, were now engaged in making an embankment adjacent to the Appellant's lot, for the benefit of navigation and commerce. They admit the general doctrine of the riparian right to the soil which may be acquired from a sea or river, by its receding naturally or by industry: but that this does not apply to the site of a *tenement within a burgh*, where the corporation is entitled to all the soil not expressly granted away: that the words, "per fluxum maris" are but words of description, which were accurate too at the date of the grant, but have since become otherwise by a change of character in the

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ence to the reasoning and authorities of M. Thierry on this point, and my own conviction of their soundness, I consider it as established that, were this question to be decided by the Roman law, the conversion of the farm into a fauxbourg of the city passed to the public all the riparian rights attached to it while a rural possession and among these the right of alluvion.

Principal and accessory.

And, if the right of alluvion is not given to urban proprietors, much less would it to a mere holder of the bed of a road. But did any one ever hear of a man's holding the bed of a road, and nothing else? Is it possible to believe that Bertrand Gravier, in selling his lots *face au*

boundary, not in the area granted. They are a limitation of the subject of the grant in the same way as a road would be, which, if removed farther off, would not carry the granted subject with it; or as the tenement of another would be; and make it an *ager limitatus*, not an *ager arcifinius;* the particular boundaries being named, not to limit the coterminous property, but the property granted. The Appeal was accordingly dismissed by the House of Lords. No arguments of counsel, other than the written pleadings, nor reasons of the Lords, are reported: but, from this case, (crowded as it is with circumstances, many of which are irrelevant to the merits of the question, and of those relevant not the words but the condensed substance is here given,) the book says, that the general principle to be gathered is that "where the sea flood is stated as the boundary of premises granted on the shore of *a sea-port being an incorporated borough*, this does not give the grantee a right to follow the sea, or to the land acquired from it, or left by it where it has receded, in prejudice of the *corporation* having, by their charter, a right vested in them to the whole territory of the burgh." And consequently, in prejudice of the *king*, or *public*, where no such grant has substituted others in their place: and it authorizes a strong inference that the English, like the Roman law, restrains the right of alluvion to the *prædium rusticum*, not admitting it on the shores bordering the city.

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fleuve, really meant to retain the bed of the road and levee? That a man, having a road on the margin of his land, which is its boundary, should mean to sell his land to the road, and to retain that by itself? a thing of no possible *use* to him, because the *use* being in the public, he could never employ it in agriculture or otherwise. Were all this possible, yet this bed of a road, this "labrum amnis" would be no *ager*, no field to which the right of alluvion could attach. That right is but an accessory, or, in the language of our law, an appendage or appurtenance, and an accessory, not to a mere line, but to something of which it can become a part. Had the law, therefore, ever given alluvion to any but the holder of an *ager*, of a field, yet the general doctrines of principal and accessory, would not have carried the benefit to Bertrand Gravier in this case. "Accessorium sequitur naturam sui principalis. Et in accessoriis, præstanda sunt quæ in principali. Accessorium non tenet sine principali. Sublato principali, tollitur et accessorium." These are maxims of the civil law. Calvini lexicon jurid. "An accessory follows the nature of its principal." If the accession then be to a field, it becomes part of the field; if to a town, it would become part of the town; if to a road, the use of which belongs to the public, it would be to the road, and to the public. It must follow the nature of its principal, and become a part of that, subject to the same rights, uses and servitudes with that: and Bertrand Gravier had no right of use in the principal, that is, of the road and levee.

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The equity on which the right of alluvion is founded is, that as the owner of the field is exposed to the danger of loss, he ought, as an equivalent, to have the chance of gain. But what equitable reason could there be, in the present case, for giving to Gravier the benefit of alluvion, when he could lose nothing by alluvion? If the levee and bank were washed away, they would not go to his plantation, back of the suburb, for a new one. The public would have to purchase a new bed for a road from the adjacent lot holders. Then "qui sentit onus, sentire debet et commodum."

Bench or Batture not Alluvion.

But I do deny to the Batture every characteristic of Alluvion.

The French and Roman law constituting that of the place, let us seek from them the definition of Alluvion. The Institute 2. 1. 20. gives it in these words, and the Digest. 41. 1. 7. § 1. in almost verbatim the same.

"Quod peralluvionem agro tuo flumen adjecit, jure gentium tibi adquiritur. Est autem alluvio incrementum latens. Per alluvionem autem id videtur adjici, quod ita paulatim adjicitur, ut intelligi non possit quadtum quoquo temporis momento adjiciatur."

"What the river adds by alluvion to your field becomes yours by the law of nature. Alluvion is a latent increase. That seems to be added by alluvion, which is so added by degrees, that you cannot conceive how much in each moment of time is added."

And in the Greek version of Theophilis, the words, "Alluvioest incrementum latens" are rendered "ἀλγδιων ἐστιν ἡ προσκλυσις ἡ προσχωσις," translated by Curtius

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"Alluvio est adundatio vel adaggeratio." Retaining only the words of this paragraph which are definition it will stand thus.

"Alluvio est incrementum [*adundatio, adaggeratio*] agro tuo flumine adjectum, ita latens et paulatim, ut intelligi non possit quantum quoquo temporis momento adjiciatur."

"Alluvion is an increment [*adundation, ad-aggeration*] added by the river to your field, so latent and gradual, that the quantity added in every moment of time cannot be known."

This is the Roman definition.

In the Law Dictionary of the Encyclop. Method. *voce* "Alluvion," by Le Rasle, the definition is:

"Alluvion, un accroissement de terrein qui se fait peu-a-peu sur les bords de la mer, des fleuves, et des rivières, par les terres que l'eau y apporte, et qui se consolident pour ne faire qu'um tout avec la terre voisine."

"Alluvion, an increment of ground which is made by little and little on the border of the sea, rivers or streams, by earth which the water brings, and which is consolidated so as to make but one whole with the neighboring ground."

To reduce the essential members of the Roman and French definitions to a single one, according with our own common sense, for certainly we all understand what alluvion is, I should consider the following definition as comprehending the essential characteristics of both.

1. "Alluvion is an extension which the waters add insensibly.
2. By apposition of particles of earth.
3. Against the adjacent field.
4. And consolidate with it so as to make a part of it."

"Incrementum flumine adjectum latens et paulatim.

{ *πρόσχωσις*, adaggeratio.
{ *πρόσκλυσις*, adundatio.

Agro.

Qui se consolide pour ne faire qu'um tout avec la lerre voisine."

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I take this to be rigorously conformable with the French and Roman definitions, as cited from the authorities before mentioned, and that it contains not one word which is not within their unquestionable meaning. Now let us try the batture by this test.

1. "Alluvion is an extension which the waters add insensibly." But the increment of the batture has by no means been *insensible*. Every swell of six months is said [Derb xix.] to deposit usually nearly a foot of mud on the whole surface of the batture, so that, when the waters retire, the increment is visible to every eye. And we have seen that, aided by Mr. Livingston's works, a single tide extended the batture from 75 to 80 feet further into the river, and deposited on it from 2 to 7 feet of mud, insomuch that a saw-scaffold, 7 feet high when the waters rose on it, was, on their retiring, buried to its top. This increment is, surely, not insensible. See the Mayor's answer to the Governor, Nov. 18, '08. MS.

2. "By *apposition* of particles of earth," or, by their *adhesion*. But the addition to the batture is by *deposition* of particles of earth on its face, not by their *apposition* or *adhesion* to the bank. It is not pretended that the bank has extended by apposition of particles to its side, one inch towards the river. It remains now the same as when the levée was erected on it. The deposition of earth on the bottom of a river, can be no more said to be an apposition to its sides, than the coating the floor of a room can be said to be plastering its walls.

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3. "Against the adjacent field," la terre voisine. Not a particle has been added to the adjacent field. That remains as it was, bounded by the identical line, *crepido*, or *ora terræ*, which has ever bounded it.

4. "And consolidated with the field so as to make part of it." Un tout avec la terre voisine. Even supposing the continuity of the adjacent field not to be broken by the intervention of the levée and road, nothing is consolidated with it, not even with the *margo riparum*, or chemin de hallage, if there be any, between the levée and brim of the bank. No extension of its surface has taken place so as to form one with the former surface, so as to be a continuation of that surface, so as to be arable like that. The highest part of the batture, even where it abuts against the bank, is still materially below the level of the adjacent field. A terrass of some feet height still separates the field from the deposition called the batture. It is now as distinguishable from the adjacent field as it ever was, being covered with water periodically six months in the year, while that is dry. Alluvion is identified with the farmer's field, because of identity of character, fitness for the same use: but the batture is not fitted for ploughing or sowing. It is clear then that the batture has not a single feature of Alluvion; and divesting it of this misnomer, the whole claim of the plaintiff falls to the ground: for he has not pretended that it could be his under any other title than that of Alluvion.

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We will now proceed to shew what it is, which will further demonstrate what it is not.

In the channel, or hollow, containing a river, the Roman law has distinguished the *alveus*, or bed of the river, and the *ripa*, or bank, the river itself being *aqua*, water. "Tribus constant flumina, alveo, aqua, et ripis." Dig. 43. 12. not. 1. All above high water mark they considered as *ripa*, bank, and all below as *alveus*, or bed. The same terms have the same extent in the language of our law likewise. But we distinguish, by an additional name, that band, or margin of the bed of the river, which lies between the high and the low water marks. We call it the *beach*. Other modern nations distinguish it also. In Spanish it is *playa*, Ital. *piaggia*, in French *plage*, in the local terms of Orleans it is *batture*, and sometimes *platin*.[1] In Latin I know

Bed, Beach, Bank.

[1] Etymologies often help us to the true meaning of words; and where they agree in several languages, they shew the common sense of mankind as to the meaning of the word. In French *Batture* is derived from *Battre*, to beat, being the margin on which the surges beat. In English *Beach*, is from the Anglo-Saxon verb Beodian, Beacian, beatian, to beat: pronounced beachian, as christian, fustian, question, are pronounced chrischian, fuschian, queschion, etc.

In Spanish *Playa*, Italian *Piaggia*, French *Plage*, } are from πλαγὰ, πληγεὶς.

Platin from πλήττειν, percuture. Perhaps from *Plat*, F. flat.

Greek, ἀιγιαλὸς, ἀκτὴ, from ἄγειν, agree.

θὶν, θινὸς, à θείνω, ferio, quia littus fluctibus feritur. Clav. Homer. A. 34.

Ῥηγμῖν, à ῥήσσω, frango. quia in litore fluctus frangitur. Ib. v. 437.

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of no term which applies exactly to *the beach of a river*. *Litus* is restrained to *the shore of the sea*, and there comprehends the beach, going to the water edge, whether at high or low tide. "*Litus* est maris, *ripa* fluminis," says Vinnius in his Commentatory on the Inst. 2. 1. 4. and he confirms this difference of extent towards the water, ibid. where he says,

"Neque verò idem est *ripa in flumine*, quod *litus in mari*. Ripa flumini non subjicitur, ut litora subjiciuntur mari, et quotidianis accessibus ab eo occupantur."

"Nor is the bank of a river, and the shore of the sea, the same thing. The bank is not subjacent to the river as the shores are to the sea, which are occupied by it in its daily accesses."

In our rivers, as far as the tide flows, the beach is the actual, as well as the nominal bed of the river, during the half of every day. Above the flow of tide, it is covered half the year at a time, instead of half of every day. The tide there being annual only, or one regular tide in a year. This, in the State where I am, begins about the first of November, is at its full tide during the months of January and February, and retires to its minimum by the end of April. In other States from North to South, this progression may vary a little. Hence we call them the Summer and Winter tides, as the Romans did theirs, *hibernus et æstivus*. The Mississippi resembles our fresh water rivers in having only one regular swell or tide a year. It differs from them in not being subject to occasional swells. The regions it waters are so vast that accidental rains and droughts in one part are countervailed by contrary accidents in other parts, so as

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never to become sensible in the river. It is only when all the countries it occupies become subject to the general influence of summer or winter, that a regular and steady flood or ebb takes place. It differs too in the seasons of its tides, which are about three months later than in our rivers. Its swell begins with February, is at its greatest height in May, June, and July, and the waters retire by the end of August. Its high tide, therefore, is in summer, and the low water in winter. Being regular in its tides, it is regular also in the period of its inundations. Whereas in ours, although the natural banks rarely escape being overflowed at some time of the season, yet the precise time varies with the accident of the fall of rains. But it is not the name of the season but the fact of the rise and fall which determine the law of the case.

Now the batture St. Mary is precisely within this band, or margin, between the high and low water mark of the Mississippi, called the beach. It extended from the bank into the river from 122 to 247 yards, before Mr. Livingston began his works, and these have added in one year, from 75 to 80 feet to its breadth. This river abounds with similar beaches, but this one alone, from its position and importance to the city, has called for a legal investigation of its character. Every country furnishes examples of this kind, great or small; but the most extensive are in Northern climates. The beach of the Forth, for example, adjacent to Edinburgh, is a mile wide, and is covered by every tide with 20 feet water. Abund-

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ance of examples of more extensive beaches might be produced; many doubtless from New Hampshire and Maine, where the tide rises 40 feet. This therefore of St. Mary is not extraordinary but for the cupidity which its importance to the city of New Orleans has inspired.

I shall proceed to state the authorities on which this division between the bank and bed of the river is established, and which makes the margin or beach a part of the bed of the river.

"Ripa est pars extima alvei, quò naturaliter flumen excurrit." Grotius de Jour. B. et P. 2. 8. 9.

"Ripa ea putatur esse quæ *plenissimum* flumen continet." Dig. 43. 12. 3. And Vinnius's commentary on this passage is "ut significet, partem ripæ non esse, spatium illud, ripæ proximum, quod aliquando flumine, caloribus minuto æstivo tempore non occupatur."

"Ripa autem ita rectè definietur, id quod flumen continet naturalem rigorem[1] cursus sui tenens Cæterùm si quando vel imbribus, vel mari, vel quâ alia ratione, ad tempus excrevit, ripas non mutat. Nemo denique dixit Nilum, qui incremento suo Ægyptum operit, ripas suas mutare, vel ampliare. Nam cum ad perpetuam sui mensuram redierit, ripæ alvei ejus

"The bank is the outermost part of the bed in which the river naturally flows."

"That is considered to be bank, which contains the river when *fullest*," and Vinnius's commentary on this passage is "this signifies that the space next to the bank, which is sometimes not occupied by the river, when reduced by heats in the summer season, is not a part of the bank."

"The bank may be thus rightly defined, that which contains the river holding the natural direction of its course. But, if at any time, either from rains, the sea, or any other cause, it has overflowed a time, it does not change its banks. Nobody has said that the Nile, which by its increase covers Egypt, changes or enlarges its banks. For when it

[1] Rigor, à rectitudine dicitur, et est cursus aquæ rectum profluentis tenorem significans. Sic vigor stillicidii rectus ejus fluxus est. Calvini Lexicon juridicum, *rigor*. I have therefore translated it "direction."

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muniendæ sunt." Dig. 43. 12. §. 5.

"Alveus flumine tegitur." Grot de jur. B. ac P. 2. 8. 9.

"Alveus est spatium illud flumini subjectum per quod fluit." Vinnii Partitiones jur. Civil. 1. 17.

has returned to its usual height, the banks of its bed are to be secured."

"The bed is covered by the river."

"The bed is the space, subjacent to the river, through which it flows."

Litus, in the Roman law, being the beach or shore of the sea, "rivage," definitions of that will corroborate the division between the *ripa* and *alveus*, *bed* and *bank* of a river. In both cases what is covered by the highest tide belongs to the public, all above it is private property.

"Litus est quousque maximus fluctus à mari pervenit. Idque Marcum Tullium aiunt, cum arbiter esset, primum constituisse." Dig. 50. 16. 96.

"Est autem litus maris quatenùs hibernus fluctus maximus excurrit." Inst. 2. 1. 3. the paraphrase of Theophilus adds, "undè et æstate, usque ad ea loca litus definimus," and his Scholiast subjoins "non ut mediis caloribus solet, sed hibernus; quoniam hieme protissimum mare turbatur, mare est undabundum."

"The shore is as far as the greatest wave of the sea reaches; and it is said that Marcus Tullius first established that when he was an Arbiter."

"The shore of the sea is as far as the greatest winter wave reaches." The paraphrase of Theophilus adds, "wherefore, in summer also, we bound the shore by the same limits, and his Scholiast subjoins, "not the wave of midsummer, but of winter; because the sea is most agitated, and most swelled."

"By *shore*, the Institutes mean up to the high-water mark, or (where little or no tides, as in the Mediterranean) as high as the highest winter wave washes. 1. Brown's Civil and Admiralty law. B. 2. c. 1.

We must not, however, with Mr. Livingston, pa.

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61, seize on the single word "hibernus," in the last quotations, and sacrifice to that both the fact, and the reason of the law. The substance of the *fact* on which the law goes, is that there is a margin of the bed of the river, covered at high water, uncovered at low. The season when this happens is a matter of circumstance only, and of immaterial circumstance. In the rivers familiar to the Romans the *maximus fluctus*, or highest wave, was in the winter; in the Mississippi it is in summer. Circumstances must always yield to substance. The *object* of the law is to reserve that margin to the public. But to reduce, with Mr. Livingston, the public right to the Summer water-line would relinquish that object. The explanations quoted from Vinnius, from Theophilus and his Scholiast, prove from the reason of the law, that the law of the winter tide for the Po, and the Tyber, must be that of the Summer tide of the Mississippi. The Spanish law therefore, is expressed in more correct terms; and we have the authority of Mr. Livingston [ibidem] for saying that the Justinian code is the common law of Spain.

"La ribera del rio se entiende todo lo que cubre el agua de el, quando mas crece, en qualquiera tiempo del año, sin salir de su yema y madre." Curia Philipica. 2. 3. 1. cited Derb. 46.

"The bank of a river is understood to be the whole of what contains its waters, when most swelled, in whatsoever time of the year, without leaving its bed or channel."

This is the law correctly for all rivers, leaving to every one its own season of flood or ebb.

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To these authorities from the Roman and Spanish law, I will add that of the French Ordinance of 1681. § 43. Art. 1. on the same subject.

"Sera réputé bord et rivage de la mer, tout ce qu'elle couvre et découvre [precisely the beach or batture] pendant les nouvelles et pleines lunes, et jusqu'ou le grand flot de mer cesse de s'y faire sentir. Il est facile de connoître jusqu'ou s'étend ordinairement le grand flot de Mars, par le gravier qui y est déposé; ainsi il ne faut pas confondre cette partie avec l'espace où parvient quelque fois l'eau de la mer par les ouragans, et par les tempêtes. Ainsi jugé à Aix le 11. Mai 1742." Boucher, Institut au droit Maritime 2713. Nouveau Commentaire sur l'Ordonnance de la Marine. de 1681. tit. 7. Art. 1.

"The border and shore of the sea shall be reputed to be the whole which it covers and uncovers [precisely the beach or batture] during the new and full moons, and as far as to where the full tide of the sea ceases to be perceived. It is easy to know how far ordinarily the full tide of March extends; by the gravel which is deposited there; therefore we must not confound that part with the space where the waters of the sea come sometimes in hurricanes and storms." So adjudged at Aix, May 11, 1742.

Let us now embody those authorities, by bringing together the separate members, making them paraphrase one another, and form a single description. The Digest 43. 12. 3. with Vinnius's comment will stand thus. "The bank ends at the line to which the water rises at its full tide; and although the space next below it is sometimes uncovered by the river, when reduced by heats in the summer season, yet that space is not a part of the bank." Now, substituting for "the heats of the summer season" which is circumstance, and immaterial, the term "low water," which is the substance of the case, nothing can more perfectly describe the beach or batture, nor

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collated with the other authorities, make a more consistent and rational provision. "The bank ends at that line on the levée to which the river rises at its full tide: and although the batture or beach next below that line is uncovered by the river, when reduced to its low tide, yet that batture or beach does not therefore become a part of the bank, but remains a part of the bed of the river," for says Theophilus "even in low water [et æstate] we bound the bank at the line of high water." Inst. 2. 1. 3. "The bank being the *extima alvei*, the *border of the bed*, within which bed the river flows when in its fullest state *naturally*, that is to say, not when "imbribus, vel quâ aliâ ratione, ad tempus, excrevit," not when "temporarily overflowed by extraordinary rains, etc." Dig. 43. 12. 5. but "quando mas crece, sin salir de su madre, en qualquiera tiempo del año," "when in its full height, without leaving its bed, to whatsoever season of the year the period of full height may belong." This is unquestionably the meaning of all the authorities taken together, and explaining one another.

From these authorities, then, the conclusion is most rigorously exact, that all is river, or river's *bed*, which is contained between the two banks, and the high water line on them; and all is *bank* which embraces the waters in their ordinary full tide.

Agreeably to this has been the constant practice and extent of grants of lands on the Mississippi. Charles Trudeau swears [Liv. 57.] that "during twen-

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ty-eight years that he has performed the functions of Surveyor General of this province, it has always been in his *knowledge*, that the grants of lands on the borders of the Mississippi, have their fronts on the *edge* of the river itself, and when its waters are *at their greatest height*." And Laveau Trudeau [Liv. 58.] that "the concession to the Jesuits, he believes, was like all the others, that is, from the river at its greatest height."

Thus we see what the law is; that it has been perfectly understood in the territory, and has been constantly practiced on, and consequently that neither the grant to the Jesuits, nor to Bertrand Gravier, could have included the beach or batture.

It will perhaps be objected that, establishing the commencement of the bank at high water mark, leaves in fact no bank at all, as the high water regularly overflows the natural bank or brim of the channel. And will it be a new phenomenon to see a river without banks sufficient to contain its waters at their full tide? The Mississippi is certainly a river of a character marked by strong features. It will be very practicable, by exaggerating these, to draw a line of separation between this and the mass of the rivers of our country, to consider it as *sui generis*, not subject to the laws which govern other rivers, but needing a system of law for itself. And until this system can be prepared it may be abandoned to speculations of death and devastation like the pres- Mississippi.

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ent. But will this be the object of the sound judge or legislator? it is certainly for the good of the whole nation to assimilate as much as possible all its parts, to strengthen their analogies, obliterate the traits of difference, and to deal law and justice to all by the same rule and same measure. The *bayous* of that territory and of the country thence to Florida Point are without banks to contain their full tides. The Mississippi is in the like state as far as Baton Rouge, where competent banks first rise out of the waters, and continue with intervals of depression to its upper parts. Many of the rivers of our maritime states are under circumstances resembling these. The channel which nature has hollowed for them is not yet deep enough, or the depositions of earth on the adjacent grounds not yet sufficiently accumulated, to raise them entirely clear of the flood tides. Extensive bodies of lands, still marshy therefore, are covered by them at every tide. In some of these cases, the hand of man, regulated by laws which restrain obstructions to navigation and injury to others, has aided and expedited the operations of nature, by raising the bank which she had begun, and redeeming the lands from the dominion of the waters. The same thing has been done on the Mississippi. An artificial bank of 3, 4, or 5 feet has been raised on the natural one, has made that sufficient to contain its full waters, and to protect a fertile and extensive country from its ravages. These are become the real banks of the river, on

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which the laws operate as if the whole was natural. The Nile, like the Mississippi, has natural banks, not competent in every part to the conveyance of its waters. In these parts artificial banks are, in like manner, raised, through which and the natural bayous and artificial canals the inundation, when at a given[1] height, is admitted; this being indispensable to fertilize the lands in a country where it never rains. And these banks of the Nile, natural and artificial, are recognized as such by the Roman law, as appears in a passage of the Digest before cited, declaring that its banks, though inundated periodically, are not thereby changed. Nor are those of our rivers when temporarily overflowed by rains, or other causes. Wherever, therefore, the banks of the Mississippi have no high water line, the objection is of no consequence, because the lands there are not as yet reclaimed or inhabited; and wherever they are reclaimed, the objection is not true; for there a high-water line exists to separate the private from public right.[2]

Nile.

[1] Justum incrementum [Nili] est cubitorum XVI; in XII. cubitis famem sentit: in XIII etiamnum esurit: XIV cubita hilaritatem afferunt: XV securitatem: XVI delicias: maximum incrementum, ad hoc ævi, fuit cubitorum XVIII. cum stetêre aquæ, apertis molibus admittuntur. Plin. hist. nat. 5. 9.

[2] This part of our subject merits fuller development. That the periodical overflowings of some rivers do not differ from the accidental overflowings of others, in any circumstance which should affect the law of the high water line, in the one more than in the other, will be rendered more evident by taking a comparative view of them. To begin with ordinary rivers. 1. These have along their greater part, and some of them through their whole course, natural banks adequate

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Property in bed and bank.

Having ascertained what the batture is not, and what it is, and established the high water mark as the line of partition between the bed and bank of the river, we will proceed to the confinement of their waters, in the high water season, except in cases of accidental inundation. Here, then, the Roman authorities tell us the inundation does not change the bank, nor the landmark on it. 2. Along other parts, where the natural bank was not high enough to contain the river in its season of steady high water, the hand of man has raised an artificial bank on the natural one, which effects this purpose, with the exception as before, of accidental inundations, where such happen. This artificial bank performs all the functions of the natural, and is placed under the same law. 3. In other parts of them, the natural banks are still not high enough to contain the high tides, nor have they yet been made so by the hand of man. Here then the law cannot operate, because the local peculiarities as yet, exclude the case from its provisions. The ground so covered by inundation, has been, or may yet be, public property. But the legislator, instead of holding it as the bed of the river, grants it to individuals as far as to the natural or incipient bank, that they, by completing the bank, may reclaim the land, for their own and the public benefit, and, this done, the law comes into action on it. Much of this reclaimed, and unreclaimed land exists in all these states.

I proceed next to rivers of particular character. Of which among those analogous to the Mississippi, the Nile is best known to us, and shall be described. That river entering Upper Egypt at its Cataracts, flows through a valley of 20 or 30 miles wide, and of 450 miles in length, bounded on both sides by a continued ridge of mountains. Through most of this course, its natural banks are sufficient to contain its waters in time of flood, till they rise to that height, at which, by their law they are to be drawn off. In low parts, where the natural banks are not sufficient, they have been raised by hand to the necessary height. In addition also to the natural *bayous*, like those of the Mississippi, they have opened numerous canals, leading off at right angles from the river towards the mountains, and sufficient to draw off the greatest part of the current passing down the river. These, in ordinary times, are closed by artificial banks raised to the level of the natural ones. When the flood is at a height sufficient for irrigating, and fertilizing the fields, which by the Nilometer is at 16 cubits above the bed of the river, these artificial banks are cut, and the waters let in. The plain declining

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to examine to whom belongs ground on either side of that line?

gently from the banks of the river, (which, like those of the Mississippi, are the highest ground,) towards the mountains, the waters are there stopped, as by a dam, and continue to rise, and diffuse themselves till they reflow nearly to the bank of the river. If the rise ceases there, the waters remain stagnant, and deposit a fertilizing mud, over the whole surface. But if uncommon rains above occasion a continuance of the rise till all the waters meet over the summits of the banks, then the motion of that in the river is communicated to the stagnant water on the plains, a general current takes place, and instead of a depositum left, the former soil is swept away to the ocean, and famine ensues that year. This, the traveller Bruce informs us, had happened three times within the 30 years preceding his being in that country. When the waters have withdrawn, and the river is returned into its natural bed, the banks are repaired in readiness to restrain the floods of the ensuing year. Such is the case in Upper Egypt. When the river enters Lower Egypt, it parts into two principal branches, the Pelusian and Canopic, which diverge and reach the Mediterranean at about 200 miles apart, including between the triangle called the Delta. Besides these, there are, within the Delta, three natural *Bayous*, and two canals, dry at low water, which make up the famed seven mouths of the Nile. The mountains diverge so as do the main branches of the river, the eastern going off to the isthmus of Suez, and the Western to the sea near Alexandria. The waters lessened by depletion, and spreading over a widening plain are reduced, by the time they reach the base of the triangle at the sea, to one or two cubits depth. Banks, therefore, of 3 to 4 feet high, are sufficient to protect the country until here also they open the *bayous* and canals which intersect the triangle. Here, then, the case recurs of a river whose natural banks are partly competent to contain its high waters in common floods, and are partly made so by the hand of man; so as to furnish an ordinary high water line. In extraordinary floods it overflows these banks, and in ordinary ones is let through them. Yet these inundations as the Digest declares, do not change the banks. "Nemo dixit Nilum ripas suas mutare," etc. But when the river retires within its natural bed, the banks are again repaired: "cum ad perpetuam sui mensuram redierit, ripæ alvei ejus muniendæ sunt," ib. [See 2. Herodot. 6—19. Strabo 788. 1 Univ. Hist. 391—413. 1 Maillet Description de l'Egypte 14—121. 1 De la Croix 338. Encyclop. Meth. Geographie. Nil. 1 Savary 3—14. 2 Savary 185—275. 1 Volney 34—48. 4 Bruce 364—407.]

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And 1. As to the bed of the river, there can be no question but that it belongs purely and simply to the sovereign, as the representative and trustee of the nation. If a navigable river indeed deserts its bed, the Roman law gave it to the adjacent proprietors; the former law of France to the sovereign; and the new code gives it as an indemnity to those

1. The Upper Missisippi, like the Upper Nile, has competent natural banks through probably three-fourths of its whole course. There, then, the Roman law is applicable in its very letter. 2. For about 400 miles more, the natural banks have been aided by artificial ones, on both sides, so as to contain all the waters of the flumen plenissimum: and the inhabitants there have no occasion as those of the Nile, to open their banks for the purpose either of fertilizing, or irrigating the lands. Here, then, is still less reason, than in the case of the Nile, to say that "the Mississippi there has changed its bank." 3. On the lower parts of the Mississippi and some of its middle portion, especially on the western side, artificial banks have not yet been made, and the country is regularly inundated, as it is on those parts of our Atlantic rivers not yet embanked. But our increasing population will continue to extend these banks of our Atlantic rivers; and, for this purpose, our governments grant the lands to individuals. And the same, we know, is done on the Mississippi. The *Cyprieres* adjacent to New Orleans, for example, though covered with the refluent water from the lake, we know have been granted to individuals, and will, with the rest of the drowned lands, be reclaimed in time, as all lower Egypt has been.

Thus, then, we find the laws of the Tyber and Nile transferred and applied to the Mississippi with perfect accordance, and that all rivers may be governed by the same laws. Other rivers are subject to accidental floods, which are declared however not to disturb the law of the *plenissimum flumen*. The Nile and Mississippi, not being subject to accidental floods, the *flumen plenissimum* with them is steady and undisturbed, and needs not the benefit of the exception. Nor will the reason of the law be changed, whether the cause of the inundation be the saturation of the earth and fountains, or rains, or melted snows, or the reflux of the ocean. The principle remains universally the same, that the land mark, when once established by a competent bank, is not changed by the inundation, or by any cause or circumstance of its high waters.

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through whose lands the new course is opened. But, while it is occupied by the river, all laws, I believe, agree in giving it to the sovereign; not as his personal property, to become an object of revenue, or of alienation, but to be kept open for the free use of all the individuals of the nation.

"Flumina omnia, et portus, publica sunt." Inst. 2. 1. 2.

"Impossibile est ut alveus fluminis pub'ici non sit publicus." Dig. 43. 12. 7.

"Litus publicum est eatenùs qua maximus fluctus exæstuat." Dig. 50. 16. 96. 112.

"All rivers and ports are public."

"It is impossible that the bed of a public river should not be public."

"The seashore is public as far as the greatest wave surges."

And "litus" we have seen is the beach or shore of the sea.

"As to navigable streams and rivers, on which boats can ply, the property of them is in the king, as an incontestable right, naturally attached to the sovereignty; and since public things belonged to the people in the Roman republic, amongst us [in France] they must belong to our Sovereigns." Julien, cited by Thierry 10. And Prevost de la Jannès, in his Principles of French Jurisprudence, after having said that the property of public things belongs to the king adds "subject to the use thereof that is due to the people." Thierry, ib.

In like manner, by the common law of England, the property, *tam avuæ quam soli*, of every river, having flux or reflux, or susceptible of any navigation, is in the king; who cannot grant it to a subject.

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because it is a highway, except for purposes which will increase the convenience of navigation. "The king has a right of property to the sea shore, and the *maritima incrementa*. The *shore* is the land lying between high water and low water mark in ordinary tides, and this land belongeth to the king *de jure communi*, both in the shore of the sea, and shore of the arms of the sea. And that is called an arm of the sea where the tide flows and reflows, and so far only as the tide flows and reflows." Hale de jure maris. c. 4. cited in Bac. Abr. Prærog. B. 3.

So that I presume no question is to be made but that the bed of the Mississippi belongs to the sovereign, that is, to the nation.

2. In the bank, from the high water line inland, it is admitted that the property or ownership, is in the Riparian proprietor of the adjacent field or farm: but the use is in the public, for the purposes of navigation and other necessary uses.

"Riparum quoque usus publicus est jure gentium [i. e. gentis humanæ] sicut ipsius fluminis: itaque naves ad eas appellere, funes arboribus ibi natis religare, onus aliquod in his reponere, cuilibet liberum est, sicut per ipsum flumen navigare. Sed proprietas earum, illorum est, quorum prædiis hærent: quâ de causâ arbores quoque in eisdem natæ eorundem sunt." Inst. 2. 1. 4. And Vinnius adds "non ut litora maris, ita ripas, conditionem fluminis sequi."

"The use of the bank is public by the law of nations [i. e. of nature] as to navigate the river itself. Therefore it is free for every one to bring his ships to at them, to make fast ropes to the trees growing there, to discharge any load on them. But the property of them is in those to whose farms they adhere; for which reason the trees likewise growing on them, belong to the same." And Vinnius adds "the banks do not, like the shores of the sea, follow the condition of the river."

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"Publica sunt flumina, portus, alveus fluminis quamdiu à flumine occupatus, ripæ. Harum rerum omnium, proprietas nullius, si ripas exciperis, quarum proprietas eorum est qui propè ripam prædia possidunt." Vinnii Part. jur. L. 1. c. 17.

"Rivers, harbors, the beds of rivers as long as occupied by the river, and the banks are public. The property of all these is in no one, if you will except the banks, the property of which is in those who possess the farms on the bank."

"Rivers, streams, high roads belong to all men in common; and although the soil of the banks of the rivers be an accession to the property of the owners of the contiguous land, yet all men may make use of them so far as to make fast their vessels to the trees which grow there, to repair them, and spread their sails on the banks; and they may there discharge their goods. Fishermen have also a right to dry their nets there, to expose their fish for sale on the banks, and in general to use them for every purpose of their art, or the occupation by which they live." 3 Part id. 28. 6. cited Thierry 9.

"The same usefulness of the navigation of rivers demands the free use of their banks, so that in the breadth and length necessary for the passage and track of the horses which draw the boats, there be neither tree planted nor any other obstacle in the way." Domat, Pub. law. 1. 8. 2. 9. To moor their vessels, spread their sails, unlade, sell their fish, etc., are here mentioned for example only, and not as a full enumeration of the variety of uses which, flowing from the public rights, may be exercised by them. In England it is said to have been decided that the public have no *common-law* right

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to tow upon the banks of navigable rivers. 3 Term. Rep. 253. cited Bac. Abr. highways A.

These authorities are so clear that they need no explanation. The text is as plain as any commentary can make it.

But there is an important limitation to these rights. Every individual is so to use them as not to obstruct others in their equal enjoyment. The space every one occupies on the bank or bed, as in a highway, a market, a theatre, is his for reasonable temporary purposes, but not to be held permanently. The adjacent landholder may repair or fortify his bank to protect his land from inundation, but under the control of the magistrate, that his neighbors be not injured. He cannot divert the course of the stream, or even draw off water from it, to the injury of the navigation; nor erect any work which shall incommode the harbor or quai.

Limitations of the rights of property.

"Ne quid in flumine publico, ripâve ejus, facias, ne quid in flumine publico, neve in ripa ejus immittas, quo statio, iterve navigio deterior sit. Dig. L. 43. t. 12. l. 1. Stationem dicimus a statuendo: is igitur locus demonstratur, ubicunque naves tutò stare possunt. ib. § 13.

"Deterior statio, itemque iter navigio fieri videtur, si usus ejus corrumpatur, vel difficilior fiat, aut minor, vel rarior, aut si in totum auferatur. Proinde, sive

"You are not to do any thing in a public river, or on its banks, you are not to cast any thing into a public river, or on its banks, which may render the station, or course of a ship worse. It is called a *station*, from statuere, to place: that place is intended where ships may safely stay.

"The station and course of a ship seems to be rendered worse, if its use be destroyed, or made more difficult, or less, or scantier, or if it be wholly taken away.

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derivatur aqua, ut exiguior facta minus sit navigabilis, vel si dilatetur, aut diffusa, b evem aquam faciat; vel contra sic coangustetur, et rapidius flumen faciat; vel si quid aliud fiat, quod navigationem incommodet, difficiliorem faciat, vel prorsus impediat, interdicto locus erit." Dig. 43. 12. 15.

"Molino, nin canal, nin casa, nin torre, nin cabaña, nin otro edificio ninguno, non puede ninguno home facer nuevamente en los rios por los quales los homes andan con sus navios, nin en las riveras dellos, porque se embarrasse el uso comun dellos. E si alguno lo ficiesse y de nuevo, ó fuesse fecho antiguamente, de que viniesse daño al uso comunal, *debe ser deribado*. Ca non seria cosa guisada que el pro de todos los omes communalmente se estorbasse por la pro de algunos." Partidas. 3. 28. 8. cited Derb. 48. Poydras 12.

Moreover, if water be drawn off, so that, being scantier, it is less navigable, or if it be dilated, or spread out, so as to make the water shallow, or if on the other hand it be so narrowed as to make the river more rapid; or if any thing else be done which incommodes the navigation, makes it worse, or wholly impedes it, there is ground for Interdict."

"Mill, nor canal, nor house, nor tower, nor cabin, nor other building whatsoever, may any man make newly in the rivers along which men go with their vessels, nor on their banks, by which their common use may be embarrassed. And if any one does it anew, or were it anciently done, so that injury is done to the common use, it ought *to be destroyed*. For it would not be meet that the benefit of all men in common should be disturbed for the benefit of some."

The owner of lands on the bank of a river may, however, make or repair a bank to protect them from the river.

"Quamvis fluminis naturalem cursum, opere manu facto alio, non liceat avertere, tamen ripam suam adversus rapidi amnis impetum, munire prohibitum, non est." Codex L. 7. t. 41. § 1.

"Although it is not allowed to turn the natural course of a river by another made by hand, yet it is not prohibited to guard one's bank against the force of a rapid river."

But he is not permitted to do even this if it will affect the public right, or injure the neighboring inhabitants.

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"In flumine publico, inve ripâ ejus facere, aut in id flumen ripamve immittere, quo *aliter* aqua fluat quam priore æstate fluxit, veto." Dig. L. 43. tit. 13. § 1.

"Quod autem ait, *aliter* fluat non ad quantitatem aquæ fluentis pertinet, sed ad modum, et ad rigorem cursûs aquæ referendum est. Et si quod aliud vitii accolæ ex facto ejus qui convenitur sentient, interdicto locus erit." Ib. § 3.

"Sunt qui putent excipiendum hoc interdicto 'quod ejus ripæ muniendæ causa non fiet,' scilicet ut si quid fiat quo aliter aqua fluat, si tamen muniendæ ripæ causâ fiat, interdicto locus non sit. Sed ne hoc quibusdam placet; neque enim ripæ, cum incommodo accolentium, muniendæ sunt." Ib. § 6.

"I forbid any thing to be done in a public river, or on its bank, or to be cast into the river or on its bank, by which the water may be made to flow otherwise than it flowed in the last season."

"When he says, *to flow otherwise*, it relates, not to the quantity of water, but to the manner and direction of the course of the water. And if the neighbors experience any other evil from the act of him who is convened, there will be ground for interdict."

"Some think liable to this interdict only 'what is not done for the purpose of strengthening the bank,' to wit, that if anything be done by which the water may otherwise flow, if nevertheless it was to secure the bank, there is no ground for interdict. But this is not approved by others, for that banks are not to be secured to the inconvenience of the inhabitants.'

More particularly full and explicit as to the inhibitions of the law against obstructing the bed, beach or bank of a sea or river, is Noodt, Probabil. Juris civilis. 4. 1. 1. After declaring that as to a house, or other such thing, built in a public river, the law is the same as obtains as to the sea and sea shore, he proposes to state, 1. The law respecting the sea and its shore, and 2. As it respects a river and its bank; and says,

"Ait Celsus maris communem usum esse, ut aëris; jactasque in id pilas fieri ejus qui jecit: sed id

"Celsus says that the use of the sea is common, as is that of the air: and that stones laid in it were

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concedendum non esse, si deterior litoris marisve usus eo modo futurus sit.

Adeo hoc quod in mari exstructum est, facientis est. Ut tamen exstruere liceat, et *decreto opus est*, et *ut innoxia ædificatio sit.*

Porrò ut usus maris, ita usus litoris, sive communis, sive publicus est jure gentium; et ideò licet unicuique in litore ædificare, litusque ædificatione suum facere.

Si tamen, ut in mari, ita in litore, *impetravit:* præterea si non eo modo deterior futurus sit usus litoris; vel nisi usus publicus *impedietur*. Hoc in mari litoribus jus est. Idem in fluminibus publicis, Ulpiano teste, Dig. 39. 2. 24. cum sic ait, 'fluminium publicorum communis est usus, sicut viarum publicarum et litorum. In his igitur *publicè* licet cuilibet ædificare, et distruere, dum tamen hoc sine incommodo cujusquam fiat.'

Vult tamen Ulpianus, ut ædificari possit, ædificari *publicè* et *sine cujusquam in ommodo;* pariter ut in mari et litore definitum: *publicè* inquam, seu *publicâ auctoritate;* id enim hoc verbum, *publicè* indigitat."

And (§ 2.) citing Dig. 43. 12. 4. he says, "quæsitum est, an is, qui in utrâque ripâ fluminis publici domus habeat, pontem privati juris [vel privato jure] facere potest; respondit non posse.

Et si facit, interdicto teneri. Causa responsi est quod, cum his who laid them, but that it was not to be admitted if the use of the shore or sea would be the worse. So what is constructed in the sea is his who constructs it. But to make it lawful to construct, a decree is necessary, and that the construction be innocent. Moreover, as the use of the sea, so that of the shore, is either common or public, by the law of nations. And therefore it is lawful for any one to build on the shore, and to make the shore his by the building; if however, as in the sea, so on the shore, he has obtained permission: and provided besides, the use of the shore will not thereby be rendered worse, nor the public use be impeded. This is the law as to the sea and its shores. It is the same as to public rivers, according to Ulpian, Dig. 39. 2. 24. where he says, 'the use of public rivers is common, as of highways and shores. In these, therefore, any one may build up, or pull down, *publicly*, provided it be done without *inconvenience to any one.*' That you may build, however, Ulpian requires that you build *publicly*, and *without inconvenience to* any one; in like manner as is prescribed as to the sea, and its shore: *publicly*, I say, or *by public authority;* for that is what the word *publicly*, indicates." And § 2. citing Dig. 43. 12. 4. he says, "it is asked whether he who has houses on both banks of the river, may build a bridge, of his own private

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pontem facit, usum fluminis publici facit deteriorem." So far Noodt.

authority. He answers, he cannot; and if he does, he is bound by the interdict. The reason of the answer is, that by building a bridge he injures the use of a public river." So far Noodt.

The same is the law as to highways and public places. Dig. 43. 8. 2. 16.

"Si quià à principe simpliciter impetraverit ut in publico loco ædificet, non est credendus sic ædificare ut cum incommodo alicujus id fiat."

"If any one obtains leave, simply, from the prince, to build in a public place, it is not to be understood he is so to build as to incommode another."

We see, then, that the Roman law not only forbade every species of construction or work on the bed, beach or bank of a sea or river, without regular permission from the proper officer, but even annuls the permission after it is given, if, in event, the work proves injurious; not abandoning the lives and properties of its citizens to the ignorance, the facility, or the corruption, of any officer. Indeed, without all this appeal to such learned authorities, does not common sense, the foundation of all authorities, of the laws themselves, and of their construction, declare it impossible that Mr. Livingston, a single individual, should have a lawful right to drown the city of New Orleans, or to injure, or change, of his own authority, the course or current of a river which is to give outlet to the productions of two-thirds of the whole area of the United States?

Such, then, are the laws of Louisiana, declaratory

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of the public rights in navigable rivers, their beds and banks. For we must ever bear in mind that the Roman law, from which these extracts are made, so far as it is not controlled by the Customs of Paris, the Ordinances of France, or the Spanish regulations, is the law of Louisiana. Nor does this law deal in precept only, or trust the public rights to the dead letter of law merely: it provides also for enforcement. The Digest. L. 43. tit. 15. de ripâ muniendâ, provides

§ 1. "Ripas fluminum publicorum reficere, munire, utilissimum est,—*dùm ne ob id navigatio deterior fiat:* illa enim sola refectio toleranda est, quæ navigationi non est impedimento."

§ 1. "To repair and strengthen the banks of public rivers, is most useful: provided the navigation be not by that deteriorated; for those repairs alone are to be permitted which do not impede the navigation."

§ 3. "Is autem qui ripam vult munire, de-damno futuro debet vel cavere, vel satisdare, secundum qualitatem personæ. Et hoc interdicto expressum est, ut damni infecti, in annos decem, viri boni arbitratu, vel caveatur, vel satisdetur."

Surety.

§ 3. "But he who would strengthen his bank, should give either an engagement, or security against future injury, according to the quality of the person. And this interdict establishes that the engagement, or security, against future injury, shall be for ten years, by the opinion of a good man."

§ 4. "Dabitur autem satis vicinis; sed et his qui trans flumen possidebunt.

§ 4. "Security shall be given to the neighbors, and also to possessors on the other side of the river."

"Ne quid in loco publico facias, inve eum locum immittas, quâ ex re quid illi damni detur. Dig. 43. 8. 2. Ad ea loca hoc interdictum pertinet, quæ publico usui destinata sunt: ut si quid illic fiat, quod privato noceret, Prætor intercederet interdicto suo. § 5.

"You are to do nothing in any public place, nor to cast any thing into that place, from which any damage may follow. This interdict respects those places, which are destined for public use: and that if anything be there done, which may injure an individual,

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Adversus eum qui molem in mare projecit, interdictum utile competit ei, cui forte hæc res nocitura sit: si autem nemo damnum sentit, tuendus est is, qui in litore ædificat vel molem in mare jacit. § 8.—Damnum autem pati videtur, qui commodum amittit, quod ex publico consequebatur, qualequale sit. § 11.—Si tamen nullum opus factum fuerit, officio judicis continetur, ut caveatur non fieri." § 18.

the Prætor may interpose by his interdict.—Against him who projects a mole into the sea, the *interdictum utile* lies for him to whom this may possibly do injury, but if nobody sustains damage, he is to be protected who builds on the sea shore, or projects a mole into the sea.—And he seems to suffer injury who loses any convenience, which he derived from the public, whatsoever it may be.—But if no work is done, he should be constrained by the authority of the judge to engage that none shall be done."

"Seeing the use of rivers belongs to the public nobody can make any change in them that may be of prejudice to the said use. Thus one cannot do any thing to make the current of the water slower, or more rapid, should this change be any way prejudicial to the public, or to particular persons. Thus although one may divert the water of a brook, or a river, to water his meadows or other grounds, or for mills and other uses; yet, every one ought to use this liberty so as not to do any prejudice either to the navigation of the river, whose waters he should turn aside, or the navigation of another river which the said water should render navigable by discharging itself into it, or to any other public use, or to neighbors who should have a like want, and an equal right." Dom. Pub. law. 1. 8. 2. 11.

The same law makes it peculiarly incumbent on the government and its officers to watch over the public

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property and rights, and to see that they are not injured or intruded on by private individuals. In order to preserve the navigation of rivers, it is proper for the government to prohibit and punish all attempts which might hinder it, or render it inconvenient, whether it be any buildings, fisheries, stakes, floodgates and other hindrances, or by diverting the water from the course of the rivers, or otherwise. And it is likewise forbidden to throw into the rivers any filth, dirt or other things, which might be of prejudice to the navigation, or cause other inconveniences." Dom. Pub. L. 1. 8. 2. 8.

"Quoique la mer et ses bords soient, suivant les principes du droit naturel, des choses publiques et communes à tous, avec faculté à chacun d'en user selon sa destination, neanmoins il ne doit pas être permis aux uns d'en jouir au préjudice des autres. Ainsi pour prévenir les inconveniens qui seroient résultés de la liberté d'user de la chose commune, il a fallu que cette liberté fut limitée par la puissance publique, ainsi que s'en explique Domat, etc. Nouv. Comment. sur l'orden. de 1681. tit. 7. art. 2. Note.

"Although the sea and its shores, according to the principles of natural law, are things public and common to all, with liberty to every one to use them according to their destination, nevertheless it ought not to be permitted to some to enjoy them to the prejudice of others. Therefore to prevent the inconveniences which would result from the liberty of using the public property, it is necessary that that liberty be limited by the public authority as explained by Domat," etc.

"It is likewise agreeable to the law of nature, that this liberty, which is common to all, being a continual occasion of quarrels, and of many bad consequences, should be regulated in some manner or other; and there could be no regulation more equitable, nor more natural, than leaving it to the sover-

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eign to provide against the said inconveniences. For as he is charged with the care of the public peace and tranquillity, as it is to him the care of the order and government of the society belongs, and it is only in his person that the right to the things which may belong in common to the public, of which he is the head, can reside; he, therefore, as head of the commonwealth, ought to have the dispensation and exercise of this right, that he may render it useful to the public. And it is on this foundation that the Ordinances of France have regulated the use of navigation, and of fishing, in the sea and in rivers." Dom. P. L. 1. 8. 2. 1. note. Observe that the work of Domat was published in 1689, and he died in 1696. Dict. hist. par une société. *verbo* Domat. We know then from him the state of the laws of France, at a period a little anterior only to the establishment of the colony of Louisiana, and the transfer of the laws of France to that colony by its charter of 1712.

To the provisions which have been thus made by the Roman and French laws and transferred to Louisiana, no particular additions, by either the French or Spanish government, have been produced on the present occasion. We know the fact, and thence infer the law, that from a very early period, the governors of that province were attentive especially to whatever respected the harbor of New Orleans, which included the grounds now in question. We see them forbidding inclosures, or buildings on them, pulling down those built, publishing

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bans against future erections, forbidding earth for buildings and streets to be taken from the shore adjacent to the city, and assigning the beach Ste. Marie for that purpose, protecting all individuals in the equal use of it as a Quai, in which cares and superintendence the Cabildo or City Council, participated; and on the change of government we see that council pass an Ordinance declaratory of the limits of the N. Orleans, and come forward in defence of the public rights, in the first moment of J. Gravier's intrusion, by pulling down his inclosure, and when that intrusion under the enterprise of Mr. Livingston, assumed a more serious aspect, they, as municipal guardians of the interests of the city, made an immediate appeal to the Judiciary, the Executive, and Legislative authorities. In addition, too, to the French laws for the protection of the bed and bank of the river, the territorial legislature, on the 15th of Feb., 1808, passed an Act, reciting that inasmuch as "the common safety of the inhabitants of the shores of the river Mississippi depends not only on the good condition of the levees or embankments, which contain the waters of the said river; but also on the strict observance of the laws concerning the police of rivers and their banks, *which are in force in this territory*, and by which it is forbidden to make on the shores of the rivers, any work tending to alter the course of the waters, or increase their rapidity, or to make their navigation less convenient, or the anchorage less

Levees and Police of Mississippi.

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sure, [almost in the words of the Roman law, "ne quid in flumine publico"] they therefore enact that no levee shall be made in front of those which exist at present, but on an inquisition by 12 inhabitants, proprietors of plantations situate on the banks of the river, convoked for that purpose, by the Parish judge; that no such levee, which at the present time of passing this act shall happen to be commenced in front of others already existing, shall be continued or finished without a like authorization; that those who act in contravention shall be fined 100 dols. for every offence in contravention, and pay the expenses of removing the nuisance, and costs of suit; and prohibiting the receiving compensation for the use of the shores under a penalty of 500 dols. A law of wonderful, not to say imprudent and dangerous tenderness to the riparian proprietors, who are thus made the sole judges in cases where their own personal interests may be in direct opposition to the interests, and even the safety of the city, to which it gives no participation or control over the power which may devote it to destruction.

This act is partly declaratory of the existing law, and partly additional. Application to the Prætor was under the Roman law (Dig. 43. 13. 6.) for permission to fortify a bank for the protection of a farm. He might refuse permission if injurious; but if he thought it would not be injurious, the party was to give security to make good all damages which should accrue within ten years; and this security was for

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the protection, not only of immediate neighbors, but of those also on the opposite bank "trans flumen possidentibus." The Governor and Cabildo seem to have held this Prætorian power in Louisiana, as well as that of demolishing what was unlawfully erected. This act of the Legislature, without taking the power from the Governor and City Council, gave a concurrent power to the parish judge, and a jury of 12 riparians: and without dispensing with the security required by the existing law, adds penalties against contraveners.

And surely it is the territorial legislature, which not only has the power, but is under the urgent duty, of providing regulations for the government of this river and its inhabitants, regulations adapted to their present political regulations, as well as to the peculiar character and circumstances of the river, and the adjacent country. Their power is amply given in the act of Congress of 1804, c. 38. § 11. "The laws in force in the said territory at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the legislature. § 4. The Governor, by and with advice and consent of the said legislative council, or a majority of them, shall have power to alter, modify, and repeal the laws which may be in force at the commencement of this act. Their legislative powers shall extend to all the rightful subjects of legislation;" with special exceptions, none of which take away the authority to leg-

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islate for the police of the river. And if ever there was a rightful subject of legislation, it is that of restraining greedy individuals from destroying the country by inundation.

Suspension of Liv.'s works, by whom?

And here it must be noted that Mr. Livingston's works were arrested by the Marshal and posse comitatus, by an order from the Secretary of State on the 25th of January, 1808, and on the 15th of the ensuing month, the legislature took the business into the hands of their own government, by passing this act. From this moment it was in Mr. Livingston's power to resume his works, by obtaining permission from the legal authority. The suspension of his works, therefore, by the general government was only during these 21 days.

That Mr. Livingston's works were clearly within the interdict of the Roman, the French, and the Spanish laws, which forbid the extending a mole into the water, constructing in it mills, floodgates, canals,

Their nature.

towers, houses, cabins, fisheries, stakes or other things which may obstruct or embarrass the use, will result from a brief recapitulation of their character and effects, drawn from the statement before given. For it is not to establish a mill, which, though an intrusion would be but a partial one: it is not to erect a temporary cabin or fisherman's hut, which would be a minor obstacle: but it is to take from the city and the nation what is their port in high water, and at low tide their Quai; to leave them not a spot where the upper craft can land

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or lie in safety; to turn the current of the river on the lower suburbs and plantations; to embank the whole of this extensive beach; to take off a fourth from the breadth of the river, and add equivalently to the rise of its waters; to demolish thus the whole levee, and sweep away the town and country in undistinguished ruin. And this not as a matter of theory alone, but of experience: the fact being known that since the embankment of the river on both sides through a space of three or four hundred miles the floods are two or three feet higher than before that embankment. In fine, should they have time to save themselves from inundation by doubling the height and breadth of their levee, it is that they may fall victims to the pestilential diseases which, under their fervid sun, will be generated by the putrefying mass with which he is to raise up the foundation between the old and new embankments. But has he entitled himself to attain these humane achievements by fulfilling the preliminary requisites of the law? Has he obtained the Prætorian, or Pro-Prætorian license, that of the governor and city council, to erect this embankment? Has he given security for all the damages which shall be occasioned by his works for ten years? Has he even carried his case before a jury of 12 brother riparians? Or does he fear to trust it even to those having similar interests with himself? lest the virtuous feeling of compunction for the fate of their fellow citizens should scout his proposition with honest indigna-

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tion? And yet, until this permission, every spadeful of earth he moved was an outrage on the law, and on the public peace and safety, which called for immediate suppression. What was to be done with such an aggressor? Shall we answer in the words of the Imperial edict, on a similar occasion, that of breaking the banks of the Nile? Cod. 9. 38. "Flammis eo loco consumatur, in quo vetustatis reverentiam, et propemodum ipsius imperii appetierit securitatem; consciis et consortibus ejus deportatione constringendis; sic ut nunquam supplicandi, eis, vel recipiendi civitatem vel dignitatem, vel substantiam, licentia tribuatur." "Let him be consumed by the flames in that spot in which he violated the reverence of antiquity, and the safety of the empire, let his accessories and accomplices be cut off by deportation from the possibility of supplicating forgiveness, or of being restored to country, dignity and possessions." Our horror is not the less because our laws are more lenient.

Remedies.

Such, then, were the facts, and such the state of the law, on which we were called, and repeatedly and urgently called to decide: not indeed in all the fulness in which they have since appeared, but sufficiently manifested to show that an atrocious enterprise was in a course of execution, which if not promptly arrested, would end in a desolation for which we could never answer. The question before us was, What is to be done? What remedy can we apply, authorized by the laws, and prompt enough to arrest the mischief?

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1. Were the case within the jurisdiction of our own laws, its character and remedy would be obvious enough. A navigable river is a highway, along which all are free to pass. And as the obstructing a highway on the land, by ditches or hedges, or logs across it, or erecting a gate across it, is a common nuisance, so to weaken injuriously the current of a river, by drawing off a part of its water, to obstruct it by moles, dykes, weirs, piles, or otherwise, is a common nuisance; and all authorities agree, that every one is allowed to remove or destroy a common nuisance. Hawkins, P. C. 1. 75. 12. The Marshal and posse, instead of pleading the order from the Secretary of State, have a right to say "we did this as citizens, and the law is our authority:" and it would really be singular if, what every man may, or may not do, at his pleasure, the magistrate who is sworn to see the law executed, and is charged with the care of the public property and rights, is alone prohibited from doing; or if his order should vitiate an act which without it would have been lawful, or which he might have executed in person. It would be equally singular, and equally absurd, that the law should punish the magistrate for hindering Mr. Livingston from doing what itself had forbidden and would punish, and reward him with damages for having been restrained from what they had forbidden him to do. The law makes it a duty in a bystander to lay hands on a man who is beating another in the street, and

Abatement of Nuisance.

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to take him off. And yet it is proposed that the same law shall punish him for taking off one who was engaged, not in beating a single individual, but in drowning a whole city and country. This is not our law; it is not the law of reason; and I am persuaded it is no part of a system emphatically called *ratio scripta.* If it is, let the law be produced. Until it is, we hold every man authorized to stay a wrong-doer, in the commission of a wrong, in which himself and all others are interested.

Forcible entry.

2. By nature's law, every man has a right to seize, and retake by force, his own property, taken from him by another, by force or fraud. Nor is this natural right among the first which is taken into the hands of regular government, after it is instituted. It was long retained by our ancestors. It was a part of their Common law, laid down in their books, recognized by all the authorities, and regulated as to certain circumstances of practice. Lambard, in his Eirenarcha. B. 2. c. 4. says, "it seemeth that (before the troublesome raigne of king Richard the second,) the Common law permitted any person (which had good right or title to enter into any land,) to win the possession by force, if otherwise he could not have obtained it. For a man may see, (in Britton fo. 115.) that a certain respite of time was given to the disseisee, (according to his distance and absence,) in which it was lawful for him to gather force, arms, and his friends and to throw the disseisor out of his wrongful posses-

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sion." Hawkins in his Pleas of the crown, and all the Abridgements and Digests of the law say the same: but, not to take it at second hand, we will recur to the earliest authorities, written while it was yet the law of the land. Fleta in the time of E. 1. writes,

"Si facta fuerit diseissina, primum et principale competit remedium quod ille qui ita disseisitus est, per se, si possit, vel sumptis viribus, vel resumptis (dum tamen sine aliquo intervallo, flagrante disseisinâ et maleficio) rejiciat spoliantem.

Quem si nullo modo expellere possit, ad superioris auxilium erit recurrendum. Si autem verus possessor absens fuerit, tunc locorum distantia distinguere oportebit, secundem quod fuerit propè vel longè, quo tempore viz. scire potuit disseisinam esse factam, ut sic, allocatis ei rationabilibus dilationibus, primo die cum venerit, statim suum dejiciat disseisitorem; qui, si primo die, non possit, in crastino, vel die tertio vel ulterius, dum tamen sine fictitiâ, hoc facere poterit, vires sibi resumendo, arma colligendo, auxiliumque amicorum convocando." Fleta L. 4. c. 2.

And Bracton L. 4. c. 6. in almost totidem verbis; and Britton "le premer remedie pour disseisine est al disseisi de recollier amys et force et sauns delay faire (après ceo que il le

"If a disseisin has been committed, a first and principal remedy lies, that he who has been so disseised, by himself, if he can, or taking force, and retaking, (provided it be without any interval, the disseisin and wrong being yet flagrant,) may eject the spoliator. Whom, if he can by no means expel, resort is to be had to the assistance of a superior. But if the rightful possessor were absent, then, regard must be had to the distance of the places, according as it was near or far off, at what time, for instance, he could know that a disseisin had been committed, that so, reasonable delays being allowed him, on the first day when he comes, he may immediately ejec the disseisor, which if he cannot do on the first day, he may on the morrow, or third day, or later, provided however he do it without false pretences, by taking to himself force, collecting arms, and calling in the aid of his friends." And Bracton L. 4. c. 6. almost in the same words; and Britton says, "The first remedy for disseisin is for the disseisee to collect his friends and force, and without delay, (after he may

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purra saver) engetter les disseisours." Britton c. 44.

know of it,) to eject the disseisors."

This right, as to real property, was first restrained in England by a statute of the 5. R. 2. c. 7. which forbade entry into lands with strong hand; and another of the same reign, 15. R. 2. c. 2. authorized immediate restitution to the wrongdoer, put out by forcible entry. And even at this day, in an *action* of trespass, for an entry, *vi et armis*, if the defendant makes good title, he is maintained in his possession and the plaintiff recovers no damages for the force. Lambard 2. 4. Hawk. P. C. 1. 64. 3. And in like manner, the natural right of reception by force still exists, as to personal goods, and the validity of their reception. Hawk. 1. 64. 1. Kelway 92. is express. Blackstone, indeed, 3. 1. 2. limits the right of reception to a peaceable one, not amounting to a breach of the peace; meaning, I presume, that the recaptor by force may be punished for the breach of the peace. So may the defendant in trespass for an entry *vi et armis*. Yet in an *action* of detinue for the personal thing retaken by force, the first wrongdoer cannot recover it, nor damages for the reception, any more than in the case of trespass for lands. So that to this day the law supports the right of reception, as between the parties, although it will punish the public offence of a breach of the peace.

Roman Law.

When this natural right was first restrained among the Romans, I am not versed enough in their laws to say. It was not by the laws

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of the XII tables, which continued long their only laws. From the expression of the Institute, "*divalibus constitutionibus*," I should infer it was first restrained by some of the Emperors, predecessors of Justinian. L. 4. t. 2. § 2.

"Divalibus constitutionibus prospectum est, ut nemini liceat vi rapere vel rem mobilem, vel se moventem, licet suam eandem rem existimat. Quod non solum in mobilibus rebus, quæ rapi possunt, constitutiones obtinere censuerunt, sed etiam in invasionibus, quæ circa res soli fiunt."

"By the Imperial constitutions it is provided that no one shall take by force a thing either moveable, or moving, although he considers it as his own. Which the constitutions have ordained to take place, not only in movable things, which may be taken, but also in intrusions which are made into lands."

But I believe that no nation has ever yet restrained itself in the exercise of this natural right of reseising its own possessions, or bound up its own hands in the manacles and cavils of litigation. It takes possession of its own at short hand, and gives to the private claimant a specified mode of preferring his claim. There are cases, of particular circumstance, where the sovereign, as by the English law, must institute a previous inquest: but in general cases as the present, he enters at once on what belongs to his nation. This is the law of England. "Whenever the king's [i. e. the nation's] title appears of record, or a possession in law be called upon him by descent, escheat, etc., he may enter without an office found: for if his title appear any way of record, it is as good as if it were found by office: and if any one enter on him, even before his entry made, he is an intruder; he cannot

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gain any freehold in the land, nor does he put the king to an assize or ejectment, or take away his right of entry: for he cannot be disseised but by record. Stamford. Prærogativa regis. 56. 57. Com. Dig. Prærog. D. 71. the substance of the authorities cited.

What are the prescriptions of the Roman law in this case, I do not know; nor are they material but inasmuch as they may be the law of the case in Louisiana. A Spanish law before cited, p. 55, forbidding erections on the beds, or on the banks of rivers, says expressly, "si alguno lo ficiese debe ser deribado." "If any one does it, it is to be destroyed." And the constant practice of the Governors of demolishing such erections was the best evidence of the law we could obtain. Not skilled in their laws ourselves, we had certainly a right to consider the Governor and Cabildo as competent expositors of them, and as acting under their justification and prescription. We might reasonably think ourselves safe in their opinions of their own law. In fact, if the immediate entry was permitted by the English law, and our own, we thought we might, *à fortiori*, conclude it permitted by those of the province. We had before us, too, the example of many of the states, and of the general government itself, which have never hesitated to remove by force the squatters and intruders on the public lands.[1] Indeed if the nation were

Squatters.

[1] Squatters or Intruders on the public or Indian lands were repeatedly removed by the State of Virginia, before its cession to Congress, by the the old Congress (see Journ. 15 June 1785,) by the present Government at various times and, as is believed, by other individual states on the ground of natural right only. *MS. Note.*

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put to action against every Squatter, for the recovery their lands, we should only have lawsuits, not lands for sale. While troops are on parade, should intruders take possession of their barracks, and shut the doors, are they to remain in the open air till an action, or even a writ of forcible entry replace them in their quarters? if in the interval of a daily adjournment, intruders take possession of the capitol, may not Congress take their seats again till an inquisition and posse shall reintroduce them? let him who can, draw a line between these cases. The correct doctrine is that so long as the nation holds lands in its own possession, so long they are under the jurisdiction of no court, but by special provision. The United States cannot be sued. The nation, by its immediate representatives, administers justice itself to all who have claims upon the public property. Hence the numerous petitions which occupy so much of every session of Congress in cases which have not been confided to the courts. But when once they have granted the lands to individuals, then the jurisdiction of the courts over them commences. They fall then into the common mass of matter justiciable before the courts. If the public has granted lands to B. which were the legal property of A., A. may bring his action against B. and the courts are competent to do him justice. The moment B. attempts to take possession of A.'s lands, the writ of forcible entry, the action of trespass or ejectment, and the Chancery process,

Jurisdiction in whom.

When it results to Courts.

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furnish him a choice of remedies. The holders of property therefore are safe against individuals by the law; and they are safe against the Nation by its own justice: and all the alarm which some have endeavored to excite on this subject has been merely *ad captandum populum*. As if the people would not be safe in their own hands, or in those of their representatives; or safer in the hands of irresponsible judges, than of persons elected by themselves annually or biennially. The truth is, no injury can be done to any man by another acting either in his own or a public character, which may not be redressed by application to the proper organ to which that portion of the administration of justice has been assigned.

3. Our third and conclusive remedy was that prescribed by the act of Congress of 1807. c. 91. to prevent settlements on lands ceded to the U. S. The Executive had been indulgent, perhaps remiss, in not removing Squatters from the public lands, under the general principles of law before explained and habitually acted on. This act therefore was a recent call on them to a more vigilant performance of their duty, in the special district of country lately ceded to them by France, with some modifications of its exercise on previous settlers. The act has two distinct classes of Intruders in view. 1. Those who, *before the passing of the act*, had possessed themselves of the lands, and were actually resident on them at the passing it: and 2. Those who should take possession *after the passage of the act*. 1.

Act of Congress.

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With respect to the class of Intruders *before* the passage of the act, the 2d section provides that, on renouncing all claim, they may obtain from the register or recorder, permission to remain on the lands, extending their occupation to 320 acres, § 8. which permissions are to be recorded: but, § 4. those not obtaining permission are, on three months' notice, to be removed by the marshal. But Mr. Livingston was much too wise to qualify himself for the benefit of these sections, by an actual residence on the batture. *His* part of the act therefore is the first section which enacts that "if any person shall take possession of any lands ceded to the U. S. by treaty, he shall forfeit all right to them if any he hath; and it shall be lawful for the President of the U. S. to direct the Marshal, or the military, to remove him from the lands. Providing however that this removal shall not affect his claim until the Commissioners shall have made their reports, and Congress decided thereon." The tribunal to which the legislature had specially delegated a power to take cognizance of the claims on the public lands in Orleans, and to inform them what lands were clear of claim, and free to be granted to our citizens, was a board of Commissioners: and the plain words and scope of the law were, to keep all claims and prior possessions *in statu quo*, until they could be investigated by these Commissioners, reported, and decided on by Congress. And this act indulgently provides that the right of a person removed by the Executive for irregularly taking

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possession of lands which he thought his own, should not be affected by this removal, but that he might still lay his claim before the Commissioners, and Congress would decide on it. Mr. Livingston's claim was clearly within the purview of the law. It was of lands "ceded to the U. S. by treaty," and he had "taken possession of them *after the passage* of the act." For the decree of the court was not till May 23, '07, and his possession was subsequent to that. If he should say, as his counsel seems to intimate, Opinions LXVII, that this was a *remitter* to him of the ancient possession of Bertrand Gravier, I answer that it was no remitter against any one, because the case was *coràm non judice*, as will be shown, and still less against the U. S. who were no parties to the suit: and if it had been a remitter, then I should have observed that the order has been executed on a person not comprehended in it; for it was expressly restrained to possessions taken after the 3d of March '07, in that case the Marshal must justify himself, not under the order, but his personal right to remove a nuisance. But investigations, reports, and decisions of Congress were dangerous. It was safer to be his own judge, to seize boldly, and put the public on the defensive. He seizes the ground he claims, and refers his title to no competent tribunal. When ousted, according to the injunctions of the statute, and repossession taken on behalf of the U. S. he passes by the preparatory tribunal of the Commissioners, and endeavors to obtain a decision on his case

Remitter.

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by Congress, in the first instance: in this too he has been disappointed. Congress have maintained the ground taken under the statute; and Mr. Livingston now demands the value of the lands from the magistrate on whom devolved the duty of executing the statute.

Taking now a brief review of the whole ground we have gone over, we may judge of the correctness of the decision of the Cabinet, as to their duty in this case. I trust it will appear to every candid and unbiassed mind, that they were not mistaken in believing

Recapitulation.

That the Customs of Paris, the Ordinances of the French government, the Roman law as a supplement to both, with the special acts of the Spanish and American legislatures, composed that system of law which was to govern their proceedings.

That, were this a case of Alluvion, the French law gives it to the Sovereign in all cases; and the Roman law to the private holder of *rural* possessions only.

That Bertrand Gravier had converted his plantations into a fauxbourg, and appendage of the city of New Orleans; with the *previous* sanction of the Spanish government, according to his own declarations, by which those claiming under him are as much bound, as if made by themselves; and certainly by its *subsequent* formal recognitions, and confirmations, which acted retrospectively; and the character of the ground being thus changed from a Rural to an

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Urban possession, the Roman law of Alluvion does not act on it.

That even had his ground retained its *rural* character, and admitting that the grant to him "*face au fleuve*" conveyed the lands to the water's edge, his sales, "*face au fleuve*" conveyed to his purchasers the same right which the same terms had brought to him, and they, and not the plaintiff, now hold the rights of B. Gravier, whatever they were.

That John Gravier elected to take the estate as a purchaser by inventory and appraisement, the Batture, if Bertrand's was not in that inventory, nor consequently purchased by John Gravier.

That the deed from him to De la Bigarre was fraudulent and void, as well by the *lex loci*, as on the face of the transaction.

That the decision of the court in his favor could in no wise concern the United States, who were neither parties to the suit, nor amenable to the jurisdiction.

And, consequently, that under all these views of the French law: the Roman law, the conveyances "*face au fleuve*," the purchase by inventory, and the fraudulency of the deed to Bigarre, the plaintiff's claim is totally unfounded. And, if void by any one of them, it is as good as if void by every one.

But it has appeared further that the batture had not a single characteristic of alluvion:

That the *bank* of a river is only what is above the high water mark:

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That all below that mark is *bed*, or alveus, of which the batture is that portion between the high and low water mark, which we call the *beach*:

That it serves, as other beaches do, for a port while covered, and Quai uncovered: and it is the only port in the vicinity of the city which river craft can use.

That, as a part of the *bed* of the river, it is purely public property.

That it is not lawful for an individual to erect, on either the bed or bank of a river, any works which may affect the convenience of navigation, of the harbor or Quai, or endanger adjacent proprietors on either side of the river.

That though it is permissible to guard our own grounds against the current of the river, yet, so only, as to be consistent with the convenience and safety of others.

That of this the legal magistrates are to be judges in the first instance; but even *their errors are* to be guarded against by an indemnification for all damages which shall actually accrue to individuals within a given time.

That Mr. Livingston's works, in a single flood, had given alarming extent, both in breadth and height, to the batture: had turned the efforts of the river against the lower suburbs, and habitations, not before exposed to them; that they would deprive the public of what was their Quai in low water, and harbor in times of flood: that, by narrowing the

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river one-fourth, it must raise it in an equivalent proportion, to discharge its waters: that this would sweep away the levee, city, and country, or quadruple the bulk of the levee, and the increased danger to which that would expose it: and, even then, would infect the city, by the putridity of the new congestions, with pestilential diseases, to which its climate is already too much predisposed.

That Mr. Livingston was doing all this, of his own authority, without asking permission from the public magistrate, or giving any security for the indemnity of injured citizens:

That under pressure of these dangers, the Executive of the nation was called on to do his duty, and to extend the protection of the law to those against whose safety these outrages were directed:

And that the authorities given by the laws, 1. For preventing obstructions in the beds, or banks of rivers, 2. For re-seising public property intruded on; and 3. For removing intruders from it by force, were adequate to the object, if promptly interposed.

Orders of the Government.

On duly weighing the information before us, which though not as ample as has since been received, was abundantly sufficient to satisfy us of the facts, and has been confirmed by all subsequent testimony, we were all unanimously of opinion, that we were authorized, and in duty bound, without delay, to arrest the aggressions of Mr. Livingston on the public rights,

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and on the peace and safety of the city of New Orleans, and that orders should be immediately dispatched for that purpose, restrained to intruders since the passage of the act of March 3. The Secretary of State accordingly wrote the letter of Nov. 30, to the Governor, covering instructions for the Marshal to remove immediately, by the civil power, any persons from the batture Ste. Marie, who had taken possession since the 3d of March, and authorising the Governor, if necessary, to use military force; for which purpose a letter of the same date was written by the Secretary of War to the commanding officer at New Orleans. This force however was not called on. The instructions to the Marshal were delivered to him about 9 o'clock in the morning of the 25th of Jan., 1808. [Dorgenoy's letter to the Governor] he immediately went to the beach, and ordered off Mr. Livingston's laborers.

Proceedings under them.

They obeyed, but soon after returned. On being ordered off a second time, the principal person told him that he was commanded by Mr. Livingston not to give up the batture until an adequate armed force should compel him. And in the meantime, Mr. Livingston had procured from a single judge of the superior court of the territory, an order, purporting to be an injunction, forbidding the marshal to disturb Edward Livingston in his possession of the batture, under pain of a contempt of court. The marshal, placed between contradictory orders, of the national government as to the

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property of the nation, and a territorial judge without jurisdiction over it, obeyed the former; collected a posse comitatus, ordered off the laborers again, who peaceably retired; and no further attempts were afterwards made to recommence the work.

Chancery Jurisdiction.

I have said that the marshal received an order, purporting to be an injunction. An authoritative injunction it could not be; because that is a Chancery process, and no Chancery jurisdiction has been given by any law to the superior court of that territory. Its judges were first established by the act of Congress of 1804. c. 38. with commissions for four years, and certain specified powers, which it is unnecessary to state, because an act of March 2, of the next year, c. 83. established, in that territory, "a government in all respects similar to that exercised in the Mississippi territory," which government had been established by an act of 1798. c. 5. "in all respects similar to that in the territory North-west of the Ohio." So that we are to find all their powers in the Ordinance of 1787, for the North-Western territory, in which are the following words. "There shall be appointed a court to consist of three judges, any two of whom to form a court, who shall have *a common law jurisdiction*, and their commissions shall continue in force during good behavior." And again "The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury." New commissions were accord-

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ingly given to the judges appointed under the first law, and, instead of their former powers, they were now to have *a common law jurisdiction.* By these words certainly no *chancery jurisdiction* was given them. Every one knows that common law jurisdiction is a technical term, used in contradistinction to a chancery jurisdiction, and exclusive of that, the common law ending where the chancery begins. The one authority is here given, and therefore they have it; the other is not given, and therefore they have it not. For they have no authority but that which is given by the legislature. If they have not chancery powers, then, by this law, there remains but one other source from which they can legally derive it. The act of 1804 before mentioned § 11, says, "the laws in force in the said territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force until altered, modified, or repealed by the legislature." We have seen that the laws in force were the French and Roman, with perhaps some occassional Spanish regulations. It being perfectly understood that these were not meant to be included in the change, it follows that the term *common law*, when applied to this territory, must be equivalent to the common law of that land, or the law of the land. Was then the establishment of the French and Roman laws an establishment of the chancery system of law? Will it be said that the Roman and Chancery laws, for instance, are the same?

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That the *civil law*, and the *chancery* are synonymous terms, both meaning the same system? Nobody will say that. The system of chancery law is partly concurrent, but chiefly supplementary and corrective of that of the common law. It sometimes corrects the harshness of the letter, where that includes what was not intended. It gives remedies in certain cases where that gave none, and more perfect remedies in other cases. It is adapted to the common law as one part of an indenture is to its counterpart. It is formed to tally with that in all its prominences and recesses, its asperities and defects, and with no other body of law on earth. It consists of a set of rules and maxims, modified by the English Chancellors through a course of several centuries, derived from no foreign model, but contrived to reduce specifically the principles of common law to those of justice. The Roman law has something similar in its *Jus Prætorium*, where the discretion of the Prætor was permitted to mollify and correct the harshness of the *leges scriptæ*. But to apply the *Jus Prætorium* to our common law, or our chancery to the *leges scriptæ* of the Romans, would be to apply to one thing the tally of another, or to mismatch the parts of different machines, so as to render them inconsistent and impracticable. Our chancery system is as different from the civil, as from the common law. All systems of law indeed profess to be founded on the principles of justice. But the superstructures erected are totally distinct. The chancery then

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being a system clearly distinct from that of the French and Roman laws, it cannot be said that the legislature of the U. S. by establishing the French and Roman laws of Orleans, established there the chancery system. It will not be pretended that the process of *subpœna*, used in the present case, and the sole and peculiar original process of chancery, is a civil law process. It is known to have been the invention of Waltham, Chancellor of Richard II. founded on the statute of Westminster the 2d c. 24. giving writs *in consimili casu*.

Might it be urged (for I am really at a loss to conjecture on what grounds this power has been assumed) that possessing under the act of '04, the powers of the chancery combined with those of the French and Roman laws, the subsequent act which gave them a common law jurisdiction, did not take away the others? *In totidem verbis* it did not, but in effect it did completely, by changing the government into one in all respects similar to that in the Mississippi territory, where there was no chancery jurisdiction. Moreover, there is not a word in the act of '04, which gives them chancery jurisdiction. It says, "they shall have jurisdiction in all criminal cases, and original and appellate jurisdiction in all civil cases of the value of 100 dollars, and the laws in force at the commencement of this act shall continue in force." Here then is their jurisdiction, and the particular system of law according to which they are to exercise it, and the chancery made no part of

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that system. This argument, too, would suppose that to the French, the Roman, the Spanish, and the Chancery laws, the common law was also added. This would be an extraordinary spectacle, indeed, and the imputation of such an intention would be an insult to the legislature. Their laws have always some rational object in view; and are so to be construed, as to produce order and justice. But this construction, establishing so many systems, and these inconsistent and contradictory, would produce anarchy and chaos, and a dissolution of all law, of all rights of person or property. And what would be the consequences of carrying on a system of chancery concurrent with the French and Roman laws? A case is brought, for instance, into their court of chancery. I ask the honorable judges, is the law of chancery in this case, the same as the civil law? If the same, what need of calling in the system of chancery? If different, will you decide against the law established by the legislature? If you carry on two systems, the one of which, in any case, gives a right to A. and the other to B. the suitor who covets his neighbor's property needs only to choose that court, the rules of which will give it to him. Thus all rights will be set afloat between two opposite systems. The wisdom of the legislature therefore has been as sound in not giving a chancery jurisdiction concurrently with the civil law, as the judges have been ill-advised in usurping it. And have they adverted to the national feelings, when

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they have ventured, on their own authority, to abolish the trial by jury pledged by the Ordinance to the inhabitants forever? Whoever wishes to take from his opponent the benefit of this trial, has only to bring his suit in the court of chancery. In this very case, on which the well-being of a great city is suspended, no jury was called in. The judges took upon themselves to decide both fact and law; aware, at the same time, that a jury could not have been found in Orleans, which would not have given a contrary decision. I shall not ascribe either favoritism, or intentional wrong to them: but they ought not to be surprised, if those do whose interests and safety are so much jeopardized by this shuffle of the judges into the place of the jury. It is much regretted that these respectable judges have set such an example of acting against law. It will be more regretted if they do not, by the spontaneous exertion of their own good sense and self-denial, tread back their steps, and perceive that there is more honor and magnanimity in correcting, than persevering in an error. They had before them too the example of their neighbors, of the Mississippi territory, whose government was expressly made the model of theirs. Their judges, like themselves, entitled to common law jurisdiction only, and sensible it needed the mollifying hand of the chancery, did not think the assumption of it within their competence. The territorial legislature therefore invested them with

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the jurisdiction. The Judiciary power of the Indian territory modelled by the same Ordinance, was enlarged in like manner by the local legislature. And yet the Orleans territory, least of all needed the aid of a Chancery, as possessing already a corresponding corrective, well adapted to the body of their law, to which the system of Chancery was entirely inapplicable.

Although I had before noted, pages 16, 68, that the decree of this court was a nullity as to the United States, 1. Because they were not a party, nor amenable to their tribunal; 2. Because also it was on a subject over which they had no jurisdiction, I have thought it useful to prove it a nullity; 3dly. Because the result of a process, and a course of pleading and trial belonging to a court whose powers they do not possess by law, in which course of action the law considers them as mere private persons, is entitled to the obedience of no one. I have done this the rather because it has been seized as a ground of censure on the Executive, as violating the sanctuary of the judicial department, and of inculpating the Marshal, who, placed between two conflicting authorities, had to decide which was legitimate, and decided correctly, as I trust appears, in obeying that which ordered him to remove the plaintiff from an usurped possession.

Act of territorial Legislature.

The territorial legislature, three weeks after, took up the subject, and passed an act prescribing in what manner riparian pro-

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prietors should proceed, who wished to make new embankments in advance of those existing. This gave to Mr. Livingston an easy mode of applying for permission to resume his enterprise; and had he obtained a regular permission, certainly it would have been duly respected by the National Executive. On the 1st of March I received from Governor Claiborne a letter of Jan. 29, informing me of the execution of our orders, and covering a vote of thanks from the legislative council and House of Representatives of Orleans, for our interposition: and on the 7th of the same month, I laid the case before Congress by the following message:

Message to Congress.

"To the Senate and House of Representatives of the United States. In the city of New Orleans and adjacent to it are sundry parcels of ground, some of them with buildings and other improvements on them, which it is my duty to present to the attention of the legislature. The title to these grounds appears to have been retained in the former sovereigns of the province of Louisiana, as public fiduciaries, and for the purposes of the province. Some of them were used for the residence of the Governor, for public offices, hospitals, barracks, magazines, fortifications, levees, etc., others for the town house, schools, markets, landings, and other purposes of the city of New Orleans. Some were held by religious corporations, or persons; others seem to have been reserved for future disposition.

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To these must be added a parcel called the batture, which requires more particular description. It is understood to have been a shoal, or elevation of the bottom of the river, adjacent to the bank of the suburb St. Mary, produced by the successive depositions of mud during the annual inundations of the river, and covered with water only during those inundations. At all other seasons it has been used by the city, immemorially, to furnish earth for raising their streets, and court yards, for mortar and other necessary purposes, and as a landing or Quai for unlading firewood, lumber, and other articles brought by water. This having lately been claimed by a private individual, the city opposed the claim on a supposed legal title in itself: but it has been adjudged that the legal title was not in the city. It is however alleged that that title, originally in the former sovereigns, was never parted with by them, but was retained by them for the uses of the city and province, and consequently has now passed over to the U. S. Until this question can be decided under legislative authority, measures have been taken according to law, to prevent any change in the state of things, and to keep the grounds clear of intruders. The settlement of this title, the appropriation of the grounds and improvements formerly occupied for provincial purposes to the same, or such other objects as may be better suited to present circumstances; the confirmation of the uses in other parcels to such bodies corporate, or private, as may of right, or on

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other reasonable cosiderations, expect them, are matters now submitted to the determination of the legislature. The paper and plans now transmitted, will give them such information on the subjects as I possess, and, being mostly originals, I must request that they may be communicated from the one to the other house, to answer the purposes of both.

TH: JEFFERSON.

March 7, 1808."

This removal of the case before Congress closed the official duties of the Executive, and his interference respecting these grounds: except that the attorney of the United States for the district of Orleans having given written permission to the inhabitants to use the batture as before, this, on the application of Mr. Livingston, was directed to be withdrawn by a letter from the Secretary of State, of Oct. 5, '09. This was correct. It placed the inhabitants exactly on their former footing, without either permission or prohibition on the part of the National government.

Removal of the case before them.

The *possession*, the only charge of the Executive, was now cleared from intrusion, and restored to its former condition: and the question of title committed to the Legislature, the only authority competent to its decision. If they considered the ground taken by the Executive as incorrect, their vote, or their reference of the case to Commissioners, would correct it. and as to damages, if any could justly be

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claimed, they were due, as in other cases, not from the judge who decides, but the party which, without right, receives the intermediate profits. If, on the other hand, Congress should deem the public right too palpable, (as to me it clearly appears,) and the claim of the plaintiff too frivolous, to occupy their time, they would of course pass it by. And certainly they might as properly be urged to waste their time in questioning whether the beds of the Potomac, the Delaware, or the Hudson, were public or private property, as that of the Mississippi. Their refusing to act on this claim therefore for five successive sessions, though constantly solicited, and their holding so long the ground taken by the Executive, is an expression of their sense that the measure has been correct.

Responsibility of a public functionary.

I have gone with some detail into the question of the plaintiff's right, because, however confident of indulgence, in the case of an honest error, I believed it would be more satisfactory to show, that in the exercise of the discretionary power entrusted to me by Congress, a sound discretion had been used, no act of oppression had been exercised, no error committed, and consequently no wrong done to the plaintiff. I have no pretensions to exemption from error. In a long course of public duties, I must have committed many. And I have reason to be thankful that, passing over these, an act of duty has been selected as a subject of complaint, which the delusions of self in-

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terest alone could have classed among them, and in which, were there error, it had been hallowed by the benedictions of an entire province, an interesting member of our national family, threatened with destruction by the bold enterprise of one individual. If this has been defeated, and they rescued, good will have been done, and with good intentions. Our constitution has wisely distributed the administration of the government into three distinct, and independent departments. To each of these it belongs to administer law within its separate jurisdiction. The judiciary in cases of *meum* and *tuum*, and of public crimes; the Executive, as to laws executive in their nature; the legislature in various cases which belong to itself, and in the important function of amending and adding to the system. Perfection in wisdom, as well as in integrity, is neither required, nor expected in these agents. It belongs not to man. Were the judge who, deluded by sophistry, takes the life of an innocent man, to repay it with his own; were he to replace, with his own fortune, that which his judgment has taken from another, under the beguilement of false deductions; were the Executive, in the vast mass of concerns of first magnitude, which he must direct, to place his whole fortune on the hazard of every opinion; were the members of the legislature to make good from their private substance every law productive of public or private injury; in short were every man engaged in rendering service to the public, bound

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in his body and goods to indemnification for all his errors, we must commit our public affairs to the paupers of the nation, to the sweepings of hospitals and poor-houses, who, having nothing to lose, would have nothing to risk. The wise know their weakness too well to assume infallibility; and he who knows most, knows best how little he knows. The vine and the fig-tree must withdraw, and the briar and bramble assume their places. But this is not the spirit of our law. It expects not impossibilities. It has consecrated the principle that its servants are not answerable for honest error of judgment. 1. Ro. Abr. 92. 2 Jones 13. 1 Salk. 397. He who has done his duty honestly, and according to his best skill and judgment, stands acquitted before God and man. If indeed a judge goes against law so grossly, so palpably as no imputable degree of folly can account for, and nothing but corruption, malice or wilful wrong can explain, and especially if circumstances prove such motives, he may be punished for the corruption the malice, the wilful wrong; but not for the error: nor is he liable to action by the party grieved. And our form of government constituting its respective functionaries judges of the law which is to guide their decisions, places all within the same reason, under the safeguard of the same rule That in deciding and acting under the law in the present case the plaintiff, who may think there was error does not himself believe there was corruption or malice, I am confident. What? was it my

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malice or corruption which prompted the Governors and Cabildoes to keep these grounds clear of intrusion? Did my malice and corruption excite the people to rise, and stay the parricide hand uplifted to destroy their city, or the grand jury to present this violator of their laws? Was it my malice and corruption which penned the opinion of the Attorney General, and drew from him a confirmation, after two years of further consideration, and when I was retired from all public office? Was it my malice or corruption which dictated the unanimous advice of the heads of departments, when officially called on for consultation and advice? Was it my malice and corruption which procured the immediate thanks of the two houses of legislature of the territory of Orleans, and a renewal of the same thanks for the same interference, in their late vote of February last? Has it been my malice and corruption which has induced the national legislature, through five successive sessions, to be deaf to the doleful Jeremiads of the plaintiff on his removal *from his estate* at New Orleans? Have all these opinions then been honest, and mine alone malicious and corrupt? Or has there been a general combination of all the public functionaries Spanish, French. and American, to oppress Mr. Livingston? No. They have done their duties, and his Declaration is a libel on all these functionaries. His counsel, indeed, has discovered [Opinions LXXIV] that we should have had legal inquests taken, writs of en-

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quiry formed, prosecutions for penalties, with all the *et cæteras* of the law. That is that we should be playing pushpin with judges and lawyers, while Livingston was working double tides to drown the city. If a functionary of the highest trust, acting under every sanction which the Constitution has provided for his aid and guide, and with the approbation, expressed or implied, of its highest councils, still acts on his own peril, the honors and offices of his country would be but snares to ruin him. It is not for me to enquire into the motives of the plaintiff in this action. I know that his understanding is of an order much too high to let him believe that he is to recover the value of the batture from me. To what indirect object he may squint with one eye, while the other looks at me, I do not pretend to say. But I do say, that if human reason is not mere illusion, and law a labyrinth without a clue, no error has been committed: and recurring to the tenor of a long life of public service, against the charge of malice and corruption I stand conscious and erect. TH: JEFFERSON

MONTICELLO, July 31, 1810.

For Mr. Livingston's Answer, see Hall's American Law Journal, Vol. 5, p. 113, of the Baltimore edition of 1814.

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Engraved Portraits of Jefferson

Reproduced from the Original Engravings published in America and Germany.

A group of engravings after the portrait of Jefferson by Gilbert Stuart. The one on the left was done by Carl Mayer, and was published by J. Scheible in Stuttgart. The centre engraving is the work of Gimbrede, and was published in Wait's "State Papers." The third portrait of this group is from the engraving published in 1807 by Robert Field, after his own painting and copy of a Stuart Jefferson.

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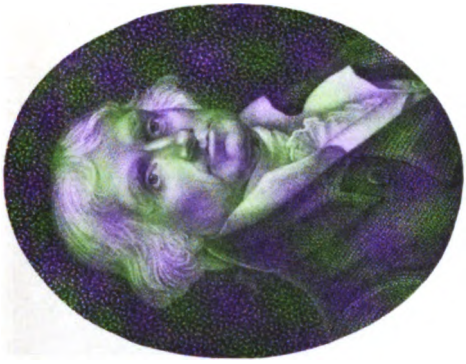

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BIOGRAPHICAL SKETCHES

OF

DISTINGUISHED MEN

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BIOGRAPHICAL SKETCHES OF DISTINGUISHED MEN

PEYTON RANDOLPH.

Peyton Randolph was the eldest son of Sir John Randolph, of Virginia, a barrister at law, and an eminent practitioner at the bar of the General Court. Peyton was educated at the College of William and Mary in Williamsburg, and thence went to England, and studied law at the Temple. At his return he intermarried with Elizabeth Harrison, sister of the afterwards Governor Harrison, entered into practice in the General Court, was afterwards appointed the king's Attorney General for the colony, and became a representative in the House of Burgesses (then so called) for the city of Williamsburg.

Governor Dinwiddie having, about this period, introduced the exaction of a new fee on his signature of grants for lands, without the sanction of any law, the House of Burgesses remonstrated against it, and sent Peyton Randolph to England, as their agent to oppose it before the king and council. The interest of the governor, as usual, prevailed against that of

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the colony, and his new exaction was confirmed by the king.

After Braddock's defeat on the Monongahela, in 1755, the incursions of the Indians on our frontiers spread panic and dismay through the whole country, insomuch that it was scarcely possible to procure men, either as regulars or militia, to go against them. To counteract this terror and to set good example, a number of the wealthiest individuals of the colony, and the highest standing in it, in public as well as in their private relations, associated under obligations to furnish each of them two able-bodied men, at their own expense, to form themselves into a regiment under the denomination of the Virginia Blues, to join the colonial force on the frontier, and place themselves under its commander, George Washington, then a colonel. They appointed William Byrd, a member of the council, colonel of the regiment, and Peyton Randolph, I think, had also some command. But the original associators had more the will than the power of becoming effective soldiers. Born and bred in the lap of wealth, all the habits of their lives were of ease, indolence and indulgence. Such men were little fitted to sleep under tents, and often without them, to be exposed to all the intemperances of the seasons, to swim rivers, range the woods, climb mountains, wade morasses, to skulk behind trees, and contend as sharpshooters with the savages of the wilderness, who in all the scenes and exercises would be in their natural element. Accordingly,

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the commander was more embarrassed with their care, than reinforced by their service. They had the good fortune to see no enemy, and to return at the end of the campaign rewarded by the favor of the public for this proof of their generous patriotism and good will.

When afterwards, in 1764, on the proposal of the Stamp Act, the House of Burgesses determined to send an address against it to the king, and memorials to the Houses of Lord and Commons, Peyton Randolph, George Wythe, and (I think) Robert C. Nicholas, were appointed to draw these papers. That to the king was by Peyton Randolph, and the memorial to the Commons was by George Wythe. It was on the ground of these papers that those gentlemen opposed the famous resolutions of Mr. Henry in 1765, to wit, that the principles of these resolutions had been asserted and maintained in the address and memorials of the year before, to which an answer was yet to be expected.

On the death of the speaker, Robinson, in 1766, Peyton Randolph was elected speaker. He resigned his office of Attorney General, in which he was succeeded by his brother Randolph, father of the late Edmund Randolph, and retired from the bar. He now devoted himself solely to his duties as a legislator, and although sound in his principles, and going steadily with us in oppostion to the British usurpations, he with the other older members, yielded the lead to the younger, only tempering their ardor, and

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so far moderating their pace as to prevent their going too far in advance of the public sentiment.

On the establishment of a committee by the legislature, to correspond with the other colonies, he was named their chairman, and their first proposition to the other colonies was to appoint similar committees who might consider the expediency of calling a general Congress of deputies in order to procure a harmony of procedure among the whole. This produced the call of the first Congress, to which he was chosen a delegate, by the House of Burgesses, and of which he was appointed, by that Congress, its president.

On the receipt of what was called Lord North's conciliatory proposition, in 1775, Lord Dunmore called the General Assembly and laid it before them. Peyton Randolph quitted the chair of Congress, in which he was succeeded by Mr. Hancock, and repaired to that of the House which had deputed him. Anxious about the tone and spirit of the answer which should be given (because being the first it might have effect on those of the other colonies), and supposing that a younger pen would be more likely to come up to the feelings of the body he had left, he requested me to draw the answer, and steadily supported and carried it through the House, with a few softenings only from the more timid members.

After the adjournment of the House of Burgesses he returned to Congress, and died there of an apolexy, on the 22d of October following, aged, as I should conjecture, about fifty years.

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He was indeed a most excellent man; and none was ever more beloved and respected by his friends. Somewhat cold and coy towards strangers, but of the sweetest affability when ripened into acquaintance. Of Attic pleasantry in conversation, always good humored and conciliatory. With a sound and logical head, he was well read in the law; and his opinions when consulted, were highly regarded, presenting always a learned and sound view of the subject, but generally, too, a listlessness to go into its thorough development; for being heavy and inert in body, he was rather too indolent and careless for business, which occasioned him to get a smaller proportion of it at the bar than his abilities would otherwise have commanded. Indeed, after his appointment as Attorney General, he did not seem to court, nor scarcely to welcome business. In that office he considered himself equally charged with the rights of the colony as with those of the crown; and in criminal prosecutions exaggerating nothing, he aimed at a candid and just state of the transaction, believing it more a duty to save an innocent than to convict a guilty man. Although not eloquent, his matter was so substantial that no man commanded more attention, which, joined with a sense of his great worth, gave him a weight in the House of Burgesses which few ever attained. He was liberal in his expenses, but correct also, so as not to be involved in pecuniary embarrassments; and with a heart always open to the amiable sensibilities of our nature, he did as many

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good acts as could have been done with his fortune, without injuriously impairing his means of continuing them. He left no issue, and gave his fortune to his widow and nephew, the late Edmund Randolph.

MERIWETHER LEWIS.[1]

Meriwether Lewis, late Governor of Louisiana, was born on the 18th of August, 1774, near the town of Charlottesville, in the county of Albemarle, in Virginia, of one of the distinguished families of that State. John Lewis, one of his father's uncles, was a member of the King's Council before the revolution; another of them, Fielding Lewis, married a sister of General Washington. His father, William Lewis, was the youngest of five sons of Colonel Robert

[1] TO MR. PAUL ALLEN, PHILADELPHIA.

MONTICELLO, April 13, 1813.

SIR,—In compliance with the request conveyed in your letter of May 25th, I have endeavored to obtain from the relations and friends of the late Governor Lewis, information of such incidents of his life as might be not unacceptable to those who may read the narrative of his western discoveries. The ordinary occurrences of a private life, and those also while acting in a subordinate sphere in the army in a time of peace, are not deemed sufficiently interesting to occupy the public attention; but a general account of his parentage, with such smaller incidents as marked early character, are briefly noted, and to these are added, as being peculiarly within my own knowledge, whatever related to the public mission, of which an account is now to be published. The result of my inquiries and recollections shall now be offered, to be enlarged or abridged as you may think best, or otherwise to be used with the materials you may have collected from other sources.

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Lewis of Albemarle, the fourth of whom, Charles, was one of the early patriots who stepped forward in the commencement of the revolution, and commanded one of the regiments first raised in Virginia, and placed on continental establishment. Happily situated at home with a wife and young family, and a fortune placing him at ease, he left all to aid in the liberation of his country from foreign usurpations, then first unmasking their ultimate end and aim. His good sense, integrity, bravery, enterprise and remarkable bodily powers, marked him an officer of great promise; but he unfortunately died early in the revolution. Nicholas Lewis, the second of his father's brothers, commanded a regiment of militia in the successful expedition of 1776, against the Cherokee Indians, who, seduced by the agents of the British government to take up the hatchet against us, had committed great havoc on our southern frontier, by murdering and scalping helpless women and children according to their cruel and cowardly principles of warfare. The chastisement they then received closed the history of their wars, prepared them for receiving the elements of civilization, which, zealously inculcated by the present government of the United States, have rendered them an industrious, peaceable and happy people. This member of the family of Lewises, whose bravery was so usefully proved on this occasion, was endeared to all who knew him by his inflexible probity, courteous disposition, benevolent heart, and engaging modesty and

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manners. He was the umpire of all the private differences of his county, selected always by both parties. He was also the guardian of Meriwether Lewis, of whom we are now to speak, and who had lost his father at an early age. He continued some years under the fostering care of a tender mother, of the respectable family of Meriwethers of the same county, and was remarkable even in his infancy for enterprise, boldness and discretion. When only eight years of age, he habitually went out, in the dead of the night, alone with his dogs, into the forest to hunt the raccoon and opossum, which, seeking their food in the night, can then only be taken. In this exercise no season or circumstance could obstruct his purpose, plunging through the winter's snows and frozen streams in pursuit of his object. At thirteen, he was put to the Latin school, and continued at that until eighteen, when he returned to his mother, and entered on the cares of his farm, having, as well as a younger brother, been left by his father with a competency for all the correct and comfortable purposes of temperate life. His talent for observation, which had led him to an accurate knowledge of the plants and animals of his own county, would have distinguished him as a farmer; but at the age of twenty, yielding to the ardor of youth, and a passion for more dazzling pursuits, he engaged as a volunteer in the body of which were called out by General Washington, on occasion of the discontents produced by the excise taxes in the western parts of the United States; and

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from that situation he was removed to the regular service as a lieutenant in the line. At twenty-three he was promoted to a captaincy; and always attracting the first attention where punctuality and fidelity were requisite, he was appointed paymaster to his regiment. About this time a circumstance occurred which, leading to the transaction which is the subject of this book, will justify a recurrence to its original idea. While I resided in Paris, John Ledyard of Connecticut arrived there, well known in the United States for energy of body and mind. He had accompanied Captain Cook in his voyage to the Pacific ocean, and distinguished himself on that voyage by his intrepidity. Being of a roaming disposition, he was now panting for some new enterprise. His immediate object at Paris was to engage a mercantile company in the fur trade of the western coast of America, in which, however, he failed. I then proposed to him to go by land to Kamschatka, cross in some of the Russian vessels to Nootka Sound, fall down into the latitude of the Missouri, and penetrate to and through that to the United States. He eagerly seized the idea, and only asked to be assured of the permission of the Russian government. I interested in obtaining that from M. de Simoulin, M. P. of the Empress at Paris, but more especially the Baron de Grimm, M. P. of Saxe-Gotha, her more special agent and correspondent there, in matters not immediately diplomatic. Her permission was obtained, and an assurance of protection while the course of the voyage

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should be through her territories. Ledyard set out from Paris and arrived at St. Petersburg after the Empress had left that place to pass the winter (I think) at Moscow. His finances not permitting him to make unnecessary stay at St. Petersburg, he left it with a passport from one of the ministers, and at two hundred miles from Kamschatka, was obliged to take up his winter quarters. He was preparing in the spring to resume his journey, when he was arrested by an officer of the Empress, who, by this time, had changed her mind, and forbidden his proceeding. He was put into a close carriage and conveyed day and night, without ever stopping, till they reached Poland, where he was set down and left to himself. The fatigue of this journey broke down his constitution, and when he returned to Paris, his bodily strength was much impaired. His mind, however, remained firm; and after this he undertook the journey to Egypt. I received a letter from him, full of sanguine hopes, dated at Cairo, the 15th of November, 1788, the day before he was to set out for the head of the Nile, on which day, however, he ended his career and life; and thus failed the first attempt to explore the western part of our nothern continent.

In 1792 I proposed to the A. P. S., that we should set on foot a subscription to engage some competent person to explore that region in the opposite direction, that is, by ascending the Missouri, crossing the Stony mountains, and descending the nearest river to the Pacific. Captain Lewis being then stationed at

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Charlottesville on the recuiting service, warmly solicited me to obtain for him the execution of that object. I told him it was proposed that the person engaged should be attended by a single companion only, to avoid exciting alarm among the Indians. This did not deter him. But Mr. André Michaux, a professed botanist, author of the "*Flora Boreali-Americana*," and of the "*Historie des chenes d'Amerique*," offering his services, they were accepted. He received his instructions, and when he had reached Kentucky in the prosecution of his journey, he was overtaken by an order from the minster of France then at Philadelphia, to relinquish the expedition, and to pursue elsewhere the botanical inquiries on which he was employed by that government; and thus failed the second attempt for exploring that region.

In 1803, the act for establishing trading houses with the Indian tribes being about to expire, some modifications of it were recommended to Congress by a confidential message of January 18th, and an extension of its views to the Indians on the Missouri. In order to prepare the way, the message proposed the sending an exploring party to trace the Missouri to its source, to cross the highlands and follow the best water communication which offered itself from thence to the Pacific Ocean. Congress approved the proposition, and voted a sum of money for carrying it into execution. Captain Lewis, who had then been near two years with me as private secretary, immediately renewed his solicitations to have the direction of the

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party. I had now had opportunities of knowing him intimately. Of courage undaunted, possessing a firmness and perseverance of purpose which nothing but impossibilities could divert from its direction, careful as a father of those committed to his charge, yet steady in the maintenance of order and discipline, intimate with the Indian character, customs and principles. Habituated to the hunting life, guarded by exact observation of the vegetables and animals of his own country, against losing time in the description of objects already possessed, honest, disinterested, liberal, of sound understanding, and a fidelity to truth so scrupulous that whatever he should report would be as certain as if seen by ourselves, with all these qualifications as if selected and implanted by nature in one body, for this express purpose, I could have no hesitation in confiding the enterprise to him. To fill up the measure desired, he wanted nothing but a greater familiarity with the technical language of the natural sciences, and readiness in the astronomical observations necessary for the geography of his route. To acquire these he repaired immediately to Philadelphia, and placed himself under the tutorage of the distinguished professors of that place, who, with a zeal and emulation, enkindled by an ardent devotion to science, communicated to him freely the information requisite for the purposes of the journey. While attending to at Lancaster, the fabrication of the arms with which he chose that his men should be provided, he had the

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benefit of daily communication with Mr. Andrew Ellicott, whose experience in astronomical observation and practice of it in the woods, enabled him to apprise Captain Lewis of the wants and difficulties he would encounter, and of the substitutes and resources offered by a woodland and uninhabited country. Deeming it necessary he should have some person with him of known competence to the direction of the enterprise, and to whom he might confide it, in the event of accident to himself, he proposed William Clarke, brother of General George Rogers Clarke, who was approved, and with that veiw received a commission of captain

In April, 1803, a draught of his instructions was sent to Captain Lewis, and on the 20th of June they were signed in the following form:

"To Meriwether Lewis, Esquire, Captain of the 1st regiment of infantry of the United States of America:

"Your situation as Secretary of the President of the United States has made you acquainted with the objects of my confidential message of January 18th, 1803, to the legislature; you have seen the act they passed, which, though expressed in general terms, was meant to sanction those objects, and you are appointed to carry them into execution.

"Instruments for ascertaining by celestial observations, the geography of the country through which you will pass, have been already provided. Light articles for barter and presents among the Indians, arms for your attendants, say for from ten to twelve

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men, boats, tents and other travelling apparatus, with ammunition, medicine, surgical instruments and provisions, you will have prepared with such aids as the Secretary of War can yield in his departments; and from him also you will receive authority to engage among our troops, by voluntary agreement, the number of attendants above mentioned, over whom you, as their commanding officer, are invested with all the powers the laws give in such a case.

"As your movements while within the limits of the United States will be better directed by occasional communications, adapted to circumstances as they arise, they will not be noticed here. What follows will respect your proceedings after your departure from the United States.

"Your mission has been communicated to the ministers here from France, Spain and Great Britain, and through them to their governments; and such assurances given them as to its objects, as we trust will satisfy them. The country of Louisiana having been ceded by Spain to France, the passport you have from the minister of France, the representative of the present sovereign of that country, will be a protection with all its subjects; and that from the minister of England will entitle you to the friendly aid of any traders of that allegiance with whom you may happen to meet.

"The object of your mission is to explore the Missouri river, and such principal streams of it, as, by its course and communication with the waters of the

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Pacific ocean, whether the Columbia, Oregon, Colorado, or any other river, may offer the most direct and practicable water communication across the continent for the purposes of commerce.

"Beginning at the mouth of the Missouri, you will take observations of latitude and longitude at all remarkable points on the river, and especially at the mouths of rivers, at rapids, at islands, and other places and objects distinguished by such natural marks and characters of a durable kind as that they may with certainty be recognized hereafter. The courses of the river between these points of observation may be supplied by the compass, the logline and by time, corrected by the observations themselves. The variations of the compass too, in different places, should be noticed.

"The interesting points of the portage between the heads of the Missouri, and of the water offering the best communication with the Pacific ocean, should also be fixed by observation, and the course of that water to the ocean, in the same manner as that of the Missouri.

"Your observations are to be taken with great pains and accuracy, to be entered distinctly and intelligibly for others as well as yourself, to comprehend all the elements necessary, with the aid of the usual tables, to fix the latitude and longitude of the places at which they were taken, and are to be rendered to the War Office, for the purpose of having the calculations made concurrently by proper persons

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within the United States. Several copies of these as well as of your other notes should be made at leisure times, and put into the care of the most trustworthy of your attendants, to guard, by multiplying them, against the accidental losses to which they will be exposed. A further guard would be that one of these copies be on the paper of the birch, as less liable to injury from damp than common paper.

"The commerce which may be carried on with the people inhabiting the line you will pursue, renders a knowledge of those people important. You will, therefore, endeavor to make yourself acquainted, as far as a diligent pursuit of your journey shall admit, with the names of the nations and their numbers; the extent of their possessions; their relations with other tribes or nations; their language, traditions, monuments; their ordinary occupations in agriculture, fishing, hunting, war, arts, and the implements for these; their food, clothing and domestic accommodations; the diseases prevalent among them, and the remedies they use; moral and physical circumstances which distinguish them from the tribes we know; peculiarities in their laws, customs and dispositions, and articles of commerce they may need or furnish; and to what extent; and, considering the interest which every nation has in extending and strengthening the authority of reason and justice among the people around them, it will be useful to acquire what knowledge you can of the state of morality, religion, and information among them, as it may better enable

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those who may endeavor to civilize and instruct them to adopt their measures to the existing notions, and practices of those on whom they are to operate.

"Other objects worthy of notice will be, the soil and face of the country, its growth and vegetable productions, especially those not of the United States, the animals of the country generally, and especially those not known in the United States; the remains and accounts of any which may be deemed rare or extinct; the mineral productions of every kind, but particularly metals, limestone, pit-coal and saltpetre; salines and mineral waters, noting the temperature of the last, and such circumstances as may indicate their character; volcanic appearances; climate, as characterized by the thermometer, by the proportion of rainy, cloudy, and clear days, by lightning, hail, snow, ice, by the access and recess of frost, by the winds prevailing at different seasons, the dates at which particular plants put forth or lose their flower or leaf, times of appearance of particular birds, reptiles or insects,

"Although your route will be along the channel of the Missouri, yet you will endeavor to inform yourself, by inquiry, of the character and extent of the country watered by its branches, and especially on its southern side. The north river, or Rio Bravo, which runs into the Gulf of Mexico, and the north river, or Rio Colorado, which runs into the Gulf of California, are understood to be the principal streams heading opposite to the waters of the Missouri, and

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running southwardly. Whether the dividing grounds between the Missouri and them are mountains or flat lands, what are their distance from the Missouri, the character of the intermediate country, and the people inhabiting it, are worthy of particular inquiry. The northern waters of the Missouri are less to be inquired after, because they have been ascertained to a considerable degree, and are still in a course of ascertainment by English traders and travellers. But if you can learn anything certain of the most northern source of the Mississippi, and of its position relatively to the Lake of the Woods, it will be interesting to us. Some account, too, of the path of the Canadian traders from the Mississippi, at the mouth of the Ouisconsing to where it strikes the Missouri, and of the soil and rivers in its course, is desirable.

"In all your intercourse with the natives, treat them in the most friendly and conciliatory manner which their own conduct will admit; allay all jealousies as to the object of your journey, satisfy them of its innocence; make them acquainted with the position, extent, character, peaceable and commercial dispositions of the United States, of our wish to be neighborly, friendly and useful to them, and of our dispositions to a commercial intercourse with them; confer with them on the points most convenient as mutual emporiums, and the articles of most desirable interchange for them and us. If a few of their influential chiefs within practicable distance,

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wish to visit us, arrange such a visit with them, and furnish them with authority to call on our officers, on their entering the United States, to have them conveyed to this place at the public expense. If any of them should wish to have some of their young people brought up with us, and taught such arts as may be useful to them, we will receive, instruct, and take care of them. Such a mission, whether of influential chiefs or of young people, would give some security to your own party. Carry with you some matter of the kine pox; inform those of them with whom you may be, of its efficacy as a preservative from the small pox; and instruct and encourage them in the use of it. This may be especially done wherever you winter.

"As it is impossible for us to foresee in what manner you will be received by those people, whether with hospitality or hostility, so is it impossible to prescribe the exact degree of perseverance with which you are to pursue your journey. We value too much the lives of citizens to offer them to probable destruction. Your numbers will be sufficient to secure you against the unauthorized opposition of individuals or of small parties; but if a superior force, authorized or not authorized by a nation, should be arrayed against your further passage, and inflexibly determined to arrest it, you must decline its farther pursuit, and return. In the loss of yourselves, we should lose also the information you will have acquired. By returning safely with that, you may

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enable us to renew the essay with better calculated means. To your own discretion, therefore, must be left the degree of danger you may risk, and the point at which you should decline, only saying we wish you to err on the side of your safety, and to bring us back your party safe, even if it be with less information.

"Should you reach the Pacific ocean, inform yourself of the circumstances which may decide whether the furs of those parts may not be collected as advantageously at the head of the Missouri (convenient as is supposed to the waters of the Colorado and Oregon or Columbia), as at Nootka Sound, or any other point of that coast; and that trade be consequently conducted through the Missouri and United States more beneficially than by the circumnavigation now practised.

"As far up the Missouri as the white settlements extend, an intercourse will propably be found to exist between them and the Spanish posts of St. Louis opposite Cahokia, or St. Genevieve opposite Kaskaskia. From still further up the river, the traders may furnish a conveyance for letters. Beyond that, you may perhaps be able to engage Indians to bring letters for the government to Cahokia or Kaskaskia, on promising that they shall there receive such special compensation as you shall have stipulated with them. Avail yourself of these means to communicate to us, at seasonable intervals, a copy of your journal, notes, and observations, of

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every kind, putting into cypher whatever might do injury if betrayed.

"On your arrival on that coast, endeavor to learn if there be any post within your reach frequented by the sea vessels of any nation, and to send two of your trusty people back by sea, in such way as shall appear practicable, with a copy of your notes; and should you be of opinion that the return of your party by the way they went will be imminently dangerous, then ship the whole, and return by sea, by the way either of Cape Horn or the Cape of Good Hope, as you shall be able. As you will be without money, clothes, or provisions, you must endeavor to use the credit of the United States to obtain them, for which purpose open letters of credit shall be furnished you, authorizing you to draw on the executive of the United States, or any of its officers, in any part of the world, on which drafts can be disposed of, and to apply with our recommendations to the consuls, agents, merchants, or citizens of any nation with which we have intercourse, assuring them in our name, that any aids they may furnish you, shall be honorably repaid, and on demand. Our consuls, Thomas Hewes at Batavia in Java, William Buchanan in the Isles of France and Bourbon, and John Elmslie at the Cape of Good Hope, will be able to supply your necessities by drafts on us.

"Should you find it safe to return by the way you go after sending two of your party round by sea,

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or with your whole party, if no conveyance by sea can be found, do so; making such observations on your return, as may serve to supply, correct, or confirm those made on your outward journey.

"On re-entering the United States and reaching a place of safety, discharge any of your attendants who may desire and deserve it, procuring for them immediate payment of all arrears of pay and clothing which may have incurred since their departure, and assure them that they shall be recommended to the liberality of the legislature for the grant of a soldier's portion of land each, as proposed in my message to Congress; and repair yourself with your papers to the seat of government.

"To provide in the accident of your death, against anarchy, dispersion and the consequent danger of your party, and total failure of the enterprise, you are hereby authorized, by any instrument signed and written in your own hand, to name the person among them who shall succeed to the command on your decease, and by like instruments to change the nomination from time to time as further experience of the characters accompanying you shall point out superior fitness; and all the powers and authorities given to yourself are, in the event of your death, transferred to, and vested in the successor so named, with further power to him, and his successors in like manner, to name each his successor, who, on the death of his predecessor, shall be invested with all the powers and authorities given to yourself.

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"Given under my hand at the city of Washington, this 20th day of June, 1803.
"THOMAS JEFFERSON, President of the U. States of America."

While these things were going on here, the country of Louisiana, lately ceded by Spain to France, had been the subject of negotiation between us and this last power; and had actually been transferred to us by treaties executed at Paris on the 30th of April. This information, received about the 1st day of July, increased infinitely the interest we felt in the expedition, and lessened the apprehensions of interruption from other powers. Everything in this quarter being now prepared, Captain Lewis left Washington on the 5th of July, 1803, and proceeded to Pittsburg, where other articles had been ordered to be provided for him. The men, too, were to be selected from the military stations on the Ohio. Delays of preparation, difficulties of navigation down the Ohio, and other untoward obstructions, retarded his arrival at Cahokia until the season was so far advanced as to render it prudent to suspend his entering the Missouri before the ice should break up in the succeeding spring. From this time his journal, now published, will give the history of his journey to and from the Pacific ocean, until his return to St. Louis on the 23d of September, 1806. Never did a similar event excite more joy through the United States.

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The humblest of its citizens had taken a lively interest in the issue of this journey, and looked forward with impatience for the information it would furnish. Their anxieties, too, for the safety of the corps had been kept in a state of excitement by lugubrious rumors, circulated from time to time on uncertain authorities, and uncontradicted by letters or other direct information from the time they had left the Mandan towns on their ascent up the river in April of the preceding year, 1805, until actual return to St. Louis.

It was the middle of Feb., 1807, before Captain Lewis with his companion Clarke reached the city of Washington, where Congress was then in session. That body granted to the two chiefs and their followers, the donation of lands which they had been encouraged to expect in reward of their toils and dangers. Captain Lewis was soon after appointed Governor of Louisiana, and Captain Clarke a general of its militia, and agent of the United States for Indian affairs in that department.

A considerable time intervened before the Governor's arrival at St. Louis. He found the territory distracted by feuds and contentions among the officers of the government, and the people themselves divided by these into factions and parties. He determined at once to take no sides with either, but to use every endeavor to conciliate and harmonize them. The even-handed justice he administered to all soon established a respect for his person

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and authority, and perseverance and time wore down animosities, and reunited the citizens again into one family.

Governor Lewis had from early life been subject to hypocondriac affections. It was a constitutional disposition in all the nearer branches of the family of his name, and was more immediately inherited by him from his father. They had not, however, been so strong as to give uneasiness to his family. While he lived with me in Washington, I observed at times sensible depressions of mind, but knowing their constitutional source, I estimated their course by what I had seen in the family. During his western expedition, the constant exertion which that required of all the faculties of body and mind, suspended these distressing affections; but after his establishment at St. Louis in sedentary occupations, they returned upon him with redoubled vigor, and began seriously to alarm his friends. He was in a paroxysm of one of these when his affairs rendered it necessary for him to go to Washington. He proceeded to the Chickasaw bluffs, where he arrived on the 15th of September, 1809, with a view of continuing his journey thence by water. Mr. Neely, agent of the United States with the Chickasaw Indians, arriving there two days after, found him extremely indisposed, and betraying at times some symptoms of a derangement of mind. The rumors of a war with England, and apprehensions that he might lose the papers he was bringing on, among

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which were the vouchers of his public accounts, and the journals and papers of his western expedition, induced him here to change his mind, and to take his course by land through the Chickasaw country. Although he appeared somewhat relieved Mr. Neely kindly determined to accompany and watch over him. Unfortunately, at their encampment, after having passed the Tennessee one day's journey, they lost two horses, which obliging Mr. Neely to halt for their recovery, the Governor proceeded under a promise to wait for him at the house of the first white inhabitant on his road. He stopped at the house of a Mr. Grinder, who, not being at home, his wife, alarmed at the symptoms of derangement she discovered, gave him up the house, and retired to rest herself in an out-house; the Governor's and Neely's servants lodging in another. About 3 o'clock in the night he did the deed which plunged his friends into affliction, and deprived his country of one of her most valued citizens, whose valor and intelligence would have been now employed in avenging the wrongs of his country, and in emulating by land the splendid deeds which have honored her arms on the ocean. It lost, too, to the nation the benefit of receiving from his own hand the narrative now offered them of his sufferings and successes in endeavoring to extend for them the boundaries of science, and to present to their knowledge that vast and fertile country which their sons are destined to fill with arts, with science, with freedom and happiness.

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To this melancholy close of the life of one whom posterity will declare not to have lived in vain, I have only to add that all the facts I have stated, are either known to myself, or communicated by his family or others, for whose truth I have no hesitation to make myself reponsible; and I conclude with tendering you the assurances of my respect and consideration.[1]

GENERAL THADDEUS KOSCIUSKO.

1. *Circumstances relating to General Kosciusko previously to his joining the American Army.* Kosciusko was born in the Grand Duchy of Lithuania in the year 1756. His family was noble, and his patrimony considerable; circumstances which he justly appreciated, for as belonging to himself they were never matters of boasting, and rarely subjects of notice, and as the property of others only regarded as advantages when accompanied by good sense and good morals. The workings of his mind on the subject of civil liberty were early and vigorous; before he was twenty the vassalage of his serfs filled him with abhorrence, and the first act of his manhood was to break their fetters.

In the domestic quarrel between the king and the dissidents in 1761, he was too young to take a part, but the partition of Poland in 1772 (of which

[1] This biographical account of Lewis was used as a preface to the "History of the Expedition of Lewis and Clarke" published in 1814.

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this quarrel was one of the pretences), engaged him in the defence of his country, and soon made him sensible of the value of military education, which he afterwards sought in the schools of Paris. It was there and while prosecuting this object, that he first became acquainted with the name of America, and the nature of the war in which the British colonies were then engaged with the mother country. In the summer of 1776 he embarked for this country, and in October of that year was appointed by Congress a colonel of engineers.

2. *Services of the General during the War.* In the spring of 1777 he joined the northern army, and in July following the writer of this notice left him on Lake Champlain engaged in strengthening our works at Ticonderoga and Mount Independence. The unfortunate character of the early part of this campaign is sufficiently known. In the retreat of the American army Kosciusko was distinguished for activity and courage, and upon him devolved the choice of camps and posts and everything connected with fortifications. The last frontier taken by the army while commanded by Gen. Schuyler was on an island in the Hudson near the mouth of the Mohawk river, and within a few miles of Albany. Here Gates, who had superseded Schuyler, found the army on the —— day of August. Public feeling and opinion were strikingly affected by the arrival of this officer, who gave it a full and lasting impression by ordering the army to advance upon

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the enemy. The state of things at that moment are well and faithfully expressed by that distinguished officer, Col. Udney Hay, in a letter to a friend. "Fortune," says he, "as if tired of persecuting us, had began to change, and Burgoyne had suffered materially on both his flanks. But these things were not of our doing; the main army, as it was called, was hunted from post to pillar, and dared not to measure its strength with the enemy; much was wanting to re-inspire it with confidence in itself, with that self-respect without which army is but a flock of sheep, a proof of which is found in the fact, that we have thanked in general orders a detachment double the force of that of the enemy, for having dared to return their fire. From this miserable state of despondency and terror, Gates' arrival raised us, as if by magic. We began to hope and then to act. Our first step was to Stillwater, and we are now on the heights called Bhemus', looking the enemy boldly in the face. Kosciusko has selected this ground, and has covered its weak point (its right) with redoubts from the hill of the river." In front of this camp thus fortified two battles were fought, which eventuated in the retreat of the enemy and his surrender at Saratoga !

The value of Colonel Kosciusko's services during this campaign, and that of 1778, will be found in the following extract from a letter of General Gates written in the spring of 1780:

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"My dear friend: After parting with you at Yorktown, I got safely to my own fireside, and without inconvenience of any kind, excepting sometimes cold toes and cold fingers. Of this sort of punishment, however, I am, it seems, to have no more, as I am destined by the Congress to command in the South. In entering on this new and (as Lee says) most difficult theatre of the war, my first thoughts have been turned to the selections of an engineer, an adjutant-general and a quarter-master-general, Kosciusko, Hay and yourself, if I can prevail upon you all, are to fill these offices, and will fill them well. The *excellent qualities* of the Pole, which no one knows better than yourself, are now acknowledged at head-quarters, and may induce others to prevent his joining us. But his promise once given, we are sure of him."

The —— of Gates, for which the preceding extract had prepared us, was given and accepted, and though no time was lost by Kosciusko, his arrival was not early enough to enable him to give his assistance to his old friend and General. But to Greene (his successor) he rendered the most important services to the last moment of the war, and which were such as drew from that officer the most lively, ardent, repeated acknowledgments, which induced Congress, in October, 1783, to bestow upon him the brevet of brigadier general, and to pass a vote declaratory of *their high sense of his faithful and meritorious conduct.*

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The war having ended, he now contemplated returning to Poland, and was determined in this measure by a letter from Prince Joseph Poniatowski, nephew of the king and generalissimo of the army. It was, however, ten years after this period (1783) before Kosciusko drew the sword on the frontiers of Cracovia.

3. *Conduct of Kosciusko in France.* When Bonaparte created the Duchy of Warsaw and bestowed it on the King of Saxony, great pains were taken to induce Kosciusko to lend himself to the frontier and support of that policy. Having withstood both the smiles and the frowns of the minister of police, a last attempt was made through the General's countrywoman and friend, the Princess Sassiche. The argument she used was founded on the condition of Poland, which, she said, no change could make worse, and that of the General which even a small change might make better. "But on this head I have a *carte blanche*, Princess," answered the General (taking her hand and leading her to her carriage), "it is the first time in my life I have wished to shorten your visit; but you shall not make me think less respectfully of you than I now do."

When these attempts had failed, a manifesto in the name of Kosciusko, dated at Warsaw and addressed to the Poles, was fabricated and published at Paris. When he complained of this abuse of his name, etc., the minister of police advised him to go to Fontainbleau.

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ANECDOTES OF BENJAMIN FRANKLIN.[1]

Our revolutionary process, as is well known, commenced by petitions, memorials, remonstances, etc., from the old Congress. These were followed by a non-importation agreement, as a pacific instrument of coercion. While that was before us, and sundry exceptions, as of arms, ammunition, etc., were moved from different quarters of the house, I was sitting by Dr. Franklin and observed to him that I thought we should except books; that we ought not to exclude science, even coming from an enemy. He thought so too, and I proposed the exception, which was agreed to. Soon after it occurred that medicine should be excepted, and I suggested that also to the Doctor. "As to that," said he, "I will tell you a story. When I was in London, in such a year, there was a weekly club of physicians, of which Sir John Pringle was president, and I was invited by my friend Dr. Fothergill to attend when convenient. Their rule was to propose a thesis one week and discuss it the next. I happened there when the question to be considered was whether physicians had, on the whole, done most good or harm? The young members, particularly, having discussed it very learnedly and eloquently till the subject was exhausted, one of

[1] These anecdotes of Benjamin Franklin were written at the request of Robert Walsh, one of Jefferson's correspondents, and inclosed to him under letter of December 4, 1818. See *ante*, Volume XV, page 175.

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them observed to Sir John Pringle, that although it was not usual for the President to take part in a debate, yet they were desirous to know his opinion on the question. He said they must first tell him whether, under the appellation of physicians, they meant to include *old women*, if they did he thought they had done more good than harm, otherwise more harm than good."

The confederation of the States, while on the carpet before the old Congress, was strenuously opposed by the smaller States, under apprehensions that they would be swallowed up by the larger ones. We were long engaged in the discussion; it produced great heats, much ill humor, and intemperate declarations from some members. Dr. Franklin at length brought the debate to a close with one of his little apologues. He observed that "at the time of the union of England and Scotland, the Duke of Argyle was most violently opposed to that measure, and among other things predicted that, as the whale had swallowed Jonah, so Scotland would be swallowed by England. However," said the Doctor, "when Lord Bute came into the government, he soon brought into its administration so many of his countrymen, that it was found in event that Jonah swallowed the whale." This little story produced a *general* laugh, and restored good humor, and the article of difficulty was passed.

When Dr. Franklin went to France, on his revolutionary mission, his eminence as a philosopher,

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his venerable appearance, and the cause on which he was sent, rendered him extremely popular. For all ranks and conditions of men there, entered warmly into the American interest. He was, therefore, feasted and invited into all the court parties. At these he sometimes met the old Duchess of Bourbon, who, being a chess player of about his force, they very generally played together. Happening once to put her king into prize, the Doctor took it. "Ah," said she, "we do not take kings so." "We do in America," said the Doctor.

At one of these parties the emperor Joseph III. then at Paris, incog., under the title of Count Falkenstein, was overlooking the game in silence, while the company was engaged in animated conversations on the American question. "How happens it M. le Comte," said the Duchess, "that while we all feel so much interest in the cause of the Americans, you say nothing for them?" "I am a king by trade," said he.

When the Declaration of Independence was under the consideration of Congress, there were two or three unlucky expressions in it which gave offence to some members. The words "Scotch and other foreign auxiliaries" excited the ire of a gentleman or two of that country. Severe strictures on the conduct of the British king, in negotiating our repeated repeals of the law which permitted the importation of slaves, were disapproved by some Southern gentlemen, whose reflections were not yet matured

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to the full abhorrence of that traffic. Although the offensive expressions were immediately yielded these gentlemen continued their depredations on other parts of the instrument. I was sitting by Dr. Franklin, who perceived that I was not insensible to these mutilations. "I have made it a rule," said he, "whenever in my power, to avoid becoming the draughtsmen of papers to be reviewed by a public body. I took my lesson from an incident which I will relate to you. When I was a journeyman printer, one of my companions, an apprentice hatter, having served out his time, was about to open shop for himself. His first concern was to have a handsome sign-board, with a proper inscription, He composed it in these words, 'John Thompson, *Hatter*, *makes* and *sells hats* for ready money,' with a figure of a hat subjoined; but he thought he would submit it to his friends for their amendments. The first he showed it to thought the word '*Hatter*' tautologous, because followed by the words 'makes hats,' which show he was a hatter. It was struck out. The next observed that the word '*makes*' might as well be omitted, because his customers would not care who made the hats. If good and to their mind, they would buy, by whomsoever made. He struck it out. A third said he though the words '*for ready money*' were useless, as it was not the custom of the place to sell on credit. Every one who purchased expected to pay. They were parted with, and the inscription now stood, 'John

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Thompson sells hats.' '*Sells hats!*' says his next friend. Why nobody will expect you to give them away, what then is the use of that word? It was stricken out, and '*hats*' followed it, the rather as there was one painted on the board. So the inscription was reduced ultimately to 'John Thompson' with the figure of a hat subjoined.''

The Doctor told me at Paris the two following anecdotes of the Abbé Raynal. He had a party to dine with him one day at Passy, of whom one half were Americans, the other half French, and among the last was the Abbé. During the dinner he got on his favorite theory of the degeneracy of animals, and even of man, in America, and urged it with his usual eloquence. The Doctor at length noticing the accidental stature and position of his guests, at table, "Come," says he, "M. l'Abbé, let us try this question by the fact before us. We are here one half Americans, and one half French, and it happens that the Americans have placed themselves on one side of the table, and our French friends are on the other. Let both parties rise, and we will see on which side nature has degenerated." It happened that his American guests were Carmichael, Harmer, Humphreys, and others of the finest sature and form; while those of the other side were remarkably diminutive, and the Abbé himself particularly, was a mere shrimp. He parried the appeal, however, by a complimentary admission of

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exceptions, among which the Doctor himself was a conspicuous one.

The Doctor and Silas Deane were in conversation one day at Passy, on the numerous errors in the Abbé's "*Histoire des deux Indes*," when he happened to step in. After the usual salutations, Silas Deane said to him, "The Doctor and myself, Abbé, were just speaking of the errors of fact into which you have been led in your history." "Oh, no Sir," said the Abbé, "that is impossible. I took the greatest care not to insert a single fact, for which I had not the most unquestionable authority." "Why," says Deane, "there is the story of Polly Baker, and the eloquent apology you have put into her mouth, when brought before a court of Massachusetts to suffer punishment under a law which you cite, for having had a bastard. I know there never was such a law in Massachusetts." "Be assured," said the Abbé, "you are mistaken, and that that is a true story. I do not immediately recollect indeed the particular information on which I quote it; but I am certain that I had for it unquestionable authority." Doctor Franklin, who had been for some time shaking with unrestrained laughter at the Abbé's confidence in his authority for that tale, said, "I will tell you, Abbé, the origin of that story. When I was a printer and editor of a newspaper, we were sometimes slack of news, and to amuse our customers, I used to fill up our vacant columns with anecdotes and fables, and fancies of

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my own, and this of Polly Baker is a story of my making, on one of these occasions." The Abbé, without the least disconcert, exclaimed with a laugh, "Oh, very well, Doctor, I had rather relate your stories than other men's truths."

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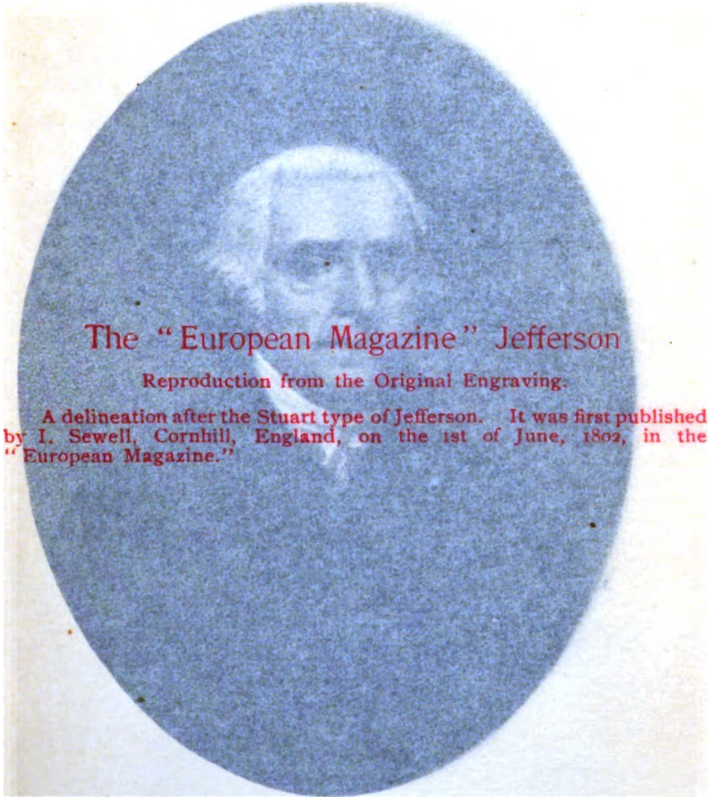

The "European Magazine" Jefferson

Reproduction from the Original Engraving.

A delineation after the Stuart type of Jefferson. It was first published by I. Sewell, Cornhill, England, on the 1st of June, 1802, in the "European Magazine."

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...f Polly Baker is a story of my ...
... these ... " The Abbe, ...
... discomfort, exclaimed with a ...
... very well, Doctor, I had rather tell ...
... other men's truths."

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THE JEFFERSON PAPERS.

FROM THE COLLECTION PRESENTED TO THE MASSACHUSETTS HISTORICAL SOCIETY IN JUNE, 1898, BY JEFFERSON'S GREAT-GRANDSON, THOMAS JEFFERSON COOLIDGE.

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PREFACE.[1]

Like many eminent men of his time, Thomas Jefferson was in the habit of preserving every scrap of writing which came into his hands, and of keeping copies of all of his own letters. Consequently he left at his death a very great mass of letters and papers of priceless value for biographical and historical purposes, together with many which would not now be thought worth preserving. Subsequently the whole collection was roughly divided into two parts, one comprising documents mainly relating to his public life. and the other letters and papers mainly connected with his private and personal relations. By an Act of Congress, approved April 12, 1848, the first portion was acquired by the United States, and is now deposited in the State Department at Washington. The second portion was presented to the Historical Society, in June, 1898, by Mr. Jefferson's great-grandson, Thomas

[1] This is the first part of the Preface to the "Jefferson Papers" when they were originally issued in 1900 in the Collections of the Massachusetts Historical Society, Seventh Series, Volume 1. The editorial footnotes throughout the "Jefferson Papers" were made by the editors who supervised the compiling of the volume for the Society—Charles Card Smith, Thomas Jefferson Coolidge, and Archibald Cary Coolidge. It is due to their courtesy and the courtesy of the Massachusetts Historical Society that the letters written by Jefferson comprised in the "Jefferson Papers" are now published for the first time in any edition of Jefferson's writings.

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Jefferson Coolidge; and it is from this latter portion of the Jefferson papers that the letters printed in this volume have been for the most part selected. Few of them are of a political character or deal with public affairs; but they very clearly illustrate many phases of Jefferson's character, and show the range and variety of his interests in his more private life.

The volume is almost equally divided between letters written by Jefferson himself and letters written to[1] him by personal or political friends. It is not surprising, but is worthy of note, that in the original separation of the papers letters were not always placed in the division to which they would seem naturally to have belonged, and that a letter and its answer were not always kept together. The letters to Jefferson are all original autographs: the letters from him are, with the exception of a few where the Committee have had access to the letters actually sent and of a few rough draughts, either copies made in the ordinary way by pressure on moistened paper or copies made by a polygraph, or stylograph, as Jefferson sometimes called it. This instrument produced a perfect facsimile, indistinguishable from the original letter, and as it is no longer in use, and is not described in any of the cyclopædias examined by the Committee, it may

[1] The letters written to Jefferson, with the exception of a letter from Lafayette, have not been reproduced, in connection with the "Jefferson Papers," presented in the following pages, as they are too numerous to include them all.

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be of interest to quote a description of one of two actually used by Jefferson, which is now in the Rouss Laboratory of the University of Virginia. "The polygraph," writes Professor Francis H. Smith, of that institution, "is a very ingenious double writing-desk, with duplicate tables, pens, and inkstands. The pens are connected together at an invariable distance by a system of jointed parallelograms, with two fixed centres, such that the pens are always parallel. Whatever movement is impressed upon one is simultaneously by the connecting linkwork communicated to the other pen. Hence, if one traces on a sheet letters or figures, its companion traces at the same time identically the same forms on another sheet. The writer, therefore, produces two identical pages at the same time. He does it with sensibly no more fatigue than if he were using one pen only, for the weight of the pens and linkwork is supported by a strand of delicate spring wires from a silver arm extending from the frame of the box above, out of the way of the writer. By this polygraph the copy may be made on paper and with ink of the same kind as the original."

Most of the letters are in excellent condition; but many of those which were copied by pressure on moistened paper are either wholly or in large part illegible, and a considerable number have been so mutilated by carelessness or accident as to render many portions of the letter unintelligible. Writing

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more than seventy years ago, when the first collected edition of Jefferson's Writings was passing through the press, his only surviving daughter described in an unpublished letter to her son-in-law, Joseph Coolidge, Jr., the condition of the manuscripts used in the preparation of that work. "The originals themselves are in many places so faded as to be almost entirely obliterated. For pages together the girls have to take advantage of the broad light of a noonday sun, frequently unable to read them but with the assistance of a looking-glass applied to the back, where alone the impression shows. A few lines will sometimes cost as many days. This is not the state of the *whole*, but a *very considerable* portion. * * * We are, the girls and myself, very closely employed from 5 to 8 hours a day with them, after which they go through a second examination by the editor, whose trouble is much lessened by our *pioneering* the way before him." Much the same condition of things exists with regard to the letters now in the posession of the Historical Soceity, though it is probable that there are fewer letters in this collection which were copied by pressure than there were in the volumes published by Jefferson's grandson.[1]

[1] The latter part of this Preface has been omitted as it consists of a biographical sketch of Jefferson, and would, therefore, only convey information that is given elsewhere in the present edition of Jefferson's Writings.

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THE JEFFERSON PAPERS.

TO LUCY NELSON.[1]

WILLIAMSBURGH, October 24, 1777.

DEAR MADAM,—Colonel Nelson's merit and his present command place him in my judgment without a competitor for the post to which you wish him appointed. It is a great happiness to me, therefore, that, while I pursue the dictates of my own judgment, I am at the same time subservient to your wishes. One truth only it behooves me to warn you of, that you may not be deceived by overrating anyone's assistance. No man, my dear madam, who acts above board has influence in any appointments here, beyond the weight of his own vote. If this appointment should be obtained for Colonel Nelson it will be by the mere force of his personal merit. In thus undeceiving you, however, I do violence to my own gratification, as this error alone has produced to me the happiness of a letter from you.

Fortune seems to have drawn a line of separation between us. Though often in the same neighborhood, some unlucky star has still shuffled us asunder. When I count backwards the years since I had last the happiness of seeing you in this place, and recur

[1] This letter is printed from Jefferson's original draught indorsed on the reverse pages of Mrs. Nelson's letter.—EDS.

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to my own lively memory of our friendship, I am almost induced to discredit my arithmetic. The affection I still retain for a family with whom I once lived in so much intimacy and confidence recalls to my mind often and often the most pleasing reflections. That heaven may shield the breast in which your happiness is embarked and administer to you every comfort of this life is the prayer of your sincere and affectionate friend

---

TO WILLIAM S. SMITH.[1]

PARIS, July 9, 1786.

DEAR SIR,—I wrote you last on the 16th of June. Since that your favors of May 21 and June 12 have come to hand. The accounts of the King of Prussia are such that we may expect his exit soon.[2] He is like the snuff of a candle,—sometimes seeming

[1] Col. William Stephens Smith was born in New York City in 1755, and graduated at Princeton College in 1774. He served with distinction during the Revolutionary War; and on the opening of diplomatic relations was appointed first Secretary of Legation to the Court of Great Britain. He accompanied John Adams to London, and July 12, 1786, he was married by the Bishop of St. Asaph to Abigail, Mr. Adams's oldest child and only surviving daughter. After his return to America he held various civil appointments, and served one term in Congress. He died at Lebanon, N. Y., June 10, 1816. (See Journal and Correspondence of Miss Adams, daughter of John Adams, pp. 99–117; Appleton's Cyclopædia of American Biography, vol. v. p. 596; Lanman's Biographical Annals, p. 395.) The letter here given is printed from the original manuscript in the large and valuable collection of autograph letters given to the Historical Society by Mr. and Mrs. A. C. Washburn.—EDS.

[2] Frederick the Great died at Potsdam, August 17, 1786, a little more than a month after the date of this letter.—EDS.

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to be out, then blazing up again for a moment. It is thought here that his death will not be followed by any immediate disturbance of the public tranquillity; that his kingdom may be considered as a machine which will go of itself a considerable time with the winding up he has given it. Besides this he has for for some time employed his successor in his councils, who is endeavoring to possess himself of and to pursue his uncle's plan of policy.[1]

The connection which has long subsisted between the Van Staphorsts, the Grands, and this court is known to you. I think it probable that private solicitations first suggested the late appointment and might be the real efficient cause of it. The ostensible one, and which has some reality too, is the accommodation of the lenders in Holland. It will doubtless facilitate the borrowing money there for this country, and multiply the partisans of the new alliance. The policy of this country is indeed wise. What would have been said a dozen years ago had any one pretended to foretell that in that short space of time France would get Holland, America, and even England under her wing?

We have had here some strong altercations between the court and the parliament of Bordeaux. The latter used a language which a British parliament would not have dared to use. The court was in the wrong, and will have the wisdom and moderation

[1] Frederick William II., nephew and successor of Frederick the Great, was born September 25, 1744, and died December 16, 1797.—Eds.

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to recede. The question is, whether lands, called Alluvions on the river Garonne, belong to the king or to the proprietors to whose soil they have been added.

I have received by Dr. Bancroft the portable copying-press; it is perfectly well made. Be so good as to present my compliments and thanks to Mr. Cavallo for his attention to it. To yourself I suppose you would rather I should present the money. This I will do the moment you will inform me of the sum. In your letter of May 21 you mention that you had paid the maker £5-10, but a former letter gave me reason to believe you had to pay something to another person for a board, or the box, or something else. I will beg the favor of you at the same time to inform me what a pair of chariot harness will cost in London, plated, not foppish but genteel, and I will add the price, or not add it to the bill I shall send you, according as I shall find it when compared with prices here. Cannot you invent some commissions for me here, by way of reprisal for the vexations I give you? Silk stockings, gillets, etc., for yourself, gewgaws and other contrivances for Madame? A propos, all hail, Madame! may your nights and days be many and full of joy! May their fruits be such as to make you feel the sweet union of parent and lover, but not so many as that you may feel their weight! May they be handsome and good as their mother, wise and honest as their father, but more milky! For your old age I will compose a prayer thirty years hence.

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To return to business (for I am never tempted to pray but when a warm feeling for my friends comes athwart my heart). They tell me that they are about altering Dr. Ramsay's book in London in order to accommodate it to the English palate and pride.[1] I hope this will not be done without the consent of the author, and I do not believe that will be obtained. If the booksellers of London are afraid to sell it, I think it can be sold here. Even the English themselves will apply for it here. It is very much esteemed by those who have read it. The French translation will be out in a short time. There is no gutting in that. All Europe will read the English transactions in America as they really happened. To what purpose then hoodwink themselves? Like the foolish ostrich who, when it has hid its head, thinks its body cannot be seen. I will beg the favor of you to prevail on Mr. Dilly[2] to send me 50 copies by the diligence. We shall see by the sale of these what further number we may call for. I will undertake to justify this to the author. They must come unbound. It will be necessary at the

[1] The reference is to David Ramsay's "History of the Revolution of South Carolina from a British Province to an Independent State," published at Trenton in 1785. A French translation was published in 1787; and an English edition in 1788. See Allibone's Dictionary of Authors, vol. iii. p. 1734.—Eds.

[2] Charles Dilly, a well-known London bookseller, was born May 22, 1739, and died May 4, 1807. Among the books published by him were Boswell's Corsica, Tour to the Hebrides, and Life of Johnson, and Lord Chesterfield's Miscellaneous Works. He and an elder brother, Edward, had an extensive trade with America. See Dictionary of National Biography, vol. xv. pp. 91, 92.—Eds.

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same time to put into some of the English papers the following advertisement.

"The bookseller to whom Dr. Ramsay's history of the revolution of South Carolina was addressed for sale, having been advised that the executing that commission would expose him to the actions of certain persons whose conduct in America, as therein represented, is not in their favor, the public are hereby notified that they may be furnished with the said work either in the original English, or well translated into French, by writing to *Froullé, libraire au quai des Augustins à Paris*, and franking their letters. An opportunity of sending it to London occurs every week by the diligence." Send me a paper or two with this advertisement in it.

To put an end to your trouble I will wish you a good night,—I beg your pardon. I had forgot that you would have it without my wishes. I bid you, therefore, a simple adieu, with assurances of my friendship and esteem.

TO MARTHA JEFFERSON RANDOLPH.[1]

NEW YORK, May 16, 1790.

MY DEAR PATSY,—Yours of the 25th of April came to hand ten days ago, and yesterday I received Mr.

[1] Martha, eldest child of Thomas and Martha (Wayles Skelton) Jefferson was born at Monticello in September, 1772; and when in her twelfth year accompanied her father to France, where she was carefully educated. In 1789 she returned to America with her father, and on the 23d of the following February was married to her second

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Randolph's of the third instant. When I wrote to him last week, I hoped to have been soon rid of the periodical headache which had attacked me. It has indeed been remarkably slight since that, but I am not yet quite clear of it. I expect every fit to be the last. I inclose the newspapers for Mr. Randolph. He will probably judge, as the world does, from the style and subject of the Discourses on Davila, that they are the production of the Vice-President.[1] On Monday last the President was taken with a peripneumony, of threatening appearance; yesterday (which was the fifth day) he was thought by the physicians to be dying. However, about 4 o'clock in the evening, a copious sweat came on, his expectoration, which had been thin and ichorous, began to assume a well digested form, his articulation became distinct, and in the course of two hours it was evident he had gone through a favorable crisis. He continues mending to-day, and from total despair we are now in good hopes of him. Indeed, he is thought quite safe. My head does not permit me to add more than the affectionate love to you all, of yours,

cousin, Thomas Mann Randolph, Jr., eldest son of Col. Thomas Mann Randolph, of Tuckahoe, by whom she had ten children. She died September 27, 1836.—Eds.

[1] The Discourses on Davila were first published in the Gazette of the United States, at Philadelphia, in 1790. See Works of John Adams, vol. i. pp. 454, 618; vol. vi. p. 225.—Eds.

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TO EDMUND PENDLETON.[1]

PHILADELPHIA, July 24, 1791.

DEAR SIR,—I received duly your favor of the 13th, and communicated it to the President. The titles of your relation were unquestionably strong of themselves, and still strengthened by your recommendation; but the place was before proposed to another, whose acceptance will probably fix it.

The President is indisposed with a tumor like that he had in New York the year before last. It does not as yet seem as if it would come to a head.

We are wonderfully slow in receiving news from General Scott.[2] The common accounts give reason to hope his expedition has succeeded well. You will have seen the rapidity with which the subscriptions to the bank were filled; as yet the delirium of speculation is too strong to admit sober reflection. It remains to be seen whether in a country whose capital is too small to carry on its own commerce,

[1] Edmund Pendleton was born in Caroline County, Va., September 9, 1721. His early advantages were small, and he began his career in the office of the County Clerk. In 1744 he was admitted to the bar; and in 1752 he was elected to the House of Burgesses. From that time down to his death, October 23, 1803, he filled a conspicuous place in public life as legislator and jurist, and was described by Jefferson as "taken all in all the ablest man in debate I ever met with." (See Appleton's Cyclopædia of American Biography, vol. iv. pp. 708, 709; Randall's Life of Jefferson, vol. i. p. 198.) The letter which follows is printed from the collection of Jefferson's letters given to the Historical Society by Mr. and Mrs. A. C. Washburn.—EDS.

[2] General Charles Scott, a native of Virginia, who had removed to Kentucky, was then serving in St. Clair's unfortunate expedition against the Indians.—EDS.

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to establish manufactures, erect buildings, etc., such sums should have been withdrawn from these useful pursuits to be employed in gambling. Whether it was well judged to force on the public a paper circulation of so many millions, for which they will be paying about 7 per cent. per annum, and thereby banish as many millions of gold and silver for which they would have paid no interest. I am afraid it is the intention to nourish the spirit of gambling by throwing in from time to time new aliment.

The question of war and peace in Europe is still doubtful. The French Revolution proceeds steadily, and is, I think, beyond the danger of accident of every kind. The success of that will ensure the progress of liberty in Europe and its preservation here. The failure of that would have been a powerful argument with those who wish to introduce a king, lords, and commons here, a sect which is all head and no body. Mr. Madison has had a little bilious touch at New York, from which he is recovered, however. Adieu, my dear Sir. Your affectionate friend and servant.

TO SAMUEL BIDDLE.

PHILADELPHIA, December 12, 1792.

SIR,—Having asked the favor of Mr. Hollingsworth to look out for a person in his neighborhood who would be willing to go to Virginia and overlook a farm for me, he informs me that you will undertake

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it for a hundred and twenty dollars a year. He seems to have mistaken me in the circumstance of time, as he mentions that you would expect to go about the new year. I had observed to him that I should not want a person till after the next harvest. The person who now takes care of the place is engaged for the ensuing year, which finishes with us about November; but I should wish you to be there by seed time in order to prepare the crop of the following year. The wages are a good deal higher than I expected, as Mr. Hollingsworth mentioned that the usual wages in your neighborhood were from £25 to £30 Maryland currency. However, I consent to give them, and the rather as there will be some matters under your care beyond the lines of the farm. I have a smith and some sawyers who will require to be seen once a day, and the first year of your being there I shall have some people employed in finishing a canal, who will also be to be attended to.

The place you are to overlook is that on which I live, and to which I shall return in March next. It is 70 miles above Richmond, on the North branch of James River, exactly where it breaks through the first ridge of little mountains, near the village of Charlottesville, in Albemarle county. It is 225 miles from Elkton, a southwest course. From this description you may find it in any map of the country. The climate is very temperate both summer and winter, and as healthy as any part of America, without a single exception.

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The farm is of about five or six hundred acres of cleared land, very hilly, originally as rich as any highlands in the world, but much worried by Indian corn and tobacco. It is still however very strong, and remarkably friendly to wheat and rye. These will be my first object. Next will be grasses, cattle, sheep, and the introduction of potatoes for the use of the farm, instead of Indian corn, in as great a degree as possible. You will have from 12 to 15 laborers under you. They will be well clothed, and as well fed as your management of the farm will enable us, for it is chiefly with a view to place them on the comfortable footing of the laborers of other countries that I come into another country to seek an overlooker for them, as also to have my lands a little more taken care. For these purposes I have long banished tobacco, and wish to do the same by Indian corn in a great degree. The house wherein you will live will be about half a mile from my own. You will, of course, keep bachelor's house. It is usual with us to give a fixed allowance of pork; I shall much rather substitute beef and mutton, as I consider pork to be as destructive an article in a farm as Indian corn. On this head we shall not disagree, and as I shall pass Elkton in March, I will contrive to give you notice to meet me there, when we may descend to other details. But for the present I shall wish to receive your answer in writing, that I may know whether you consider yourself as engaged, so that I need not look out for another. I

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leave you free as to the time of going, from harvest till Christmas. If you will get yourself conveyed as far as Fredericksburg, which is as far as the stages go on that road, I will find means of conveying you from thence, which will be 70 miles. So far respects the farm over which I wish to place you.

Besides this I have on the opposite side of the little river running through my lands, 2000 acres of lands of the same quality, and which has been cultivated in the same way, which I wish to tenant out at a quarter of a dollar an acre, in farms of such sizes as the tenants would choose. I would hire the laborers now employed on them from year to year to the same tenants, at about 50 dollars for a man and his wife, the tenant feeding and clothing them and paying their taxes and those of the land, which are very trifling. The lands to be leased for seven years or more, the laborers only from year to year, to begin next November. I would like the farms to be not less than 200 acres, because such a farmer would probably like to hire a man and his wife as laborers. I have mentioned these circumstances to you, because I have understood that tenants might probably be got from Maryland, and perhaps it would be agreeable to you to engage some of your acquaintances to go and settle so near where you will be. Perhaps you could inform me in what other part of Maryland or the neighboring States tenants might be more probably found, and I should willingly incur the expense of having them sought for. Your

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assistance in this would particularly oblige me. I would ease the rent of the first year, that the tenant might get himself under way with as few difficulties as possible, but I should propose restrictions against cultivating too great a quantity of Indian corn.

In expectation of hearing from you immediately I am, Sir, your humble servant.

P. S. There is a market for wheat, rye, etc., in two little towns on each side of my lands, neither more than two miles and a half distant.

TO MARTHA JEFFERSON RANDOLPH.

PHILADELPHIA, December 31, 1792.

MY DEAR MARTHA,—I received three days ago Mr. Randolph's letter of the 14th from Richmond, and received it with great joy, as it informed me of the re-establishment of dear Anne's health. I apprehend from an expression in his letter that some of mine may have miscarried. I have never failed to write every Thursday or Friday. Perceiving by the Richmond paper that the Western post now leaves that place on Monday, I change my day of writing also to Sunday or Monday. One of the Indian chiefs now here, whom you may remember to have seen at Monticello a day or two before Tarleton drove us off, remembers you and enquired after you. He is of the Pioria nation; perhaps you may recollect that he gave our name to an infant son he

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then had with him, and who, he now tells me, is a fine lad. Blanchard is arrived here and is to ascend in his balloon within a few days.[1] The affairs of France are going on well. Tell Mr. Randolph that I write him a letter by this post in answer to the application to rent Elkhall, but under the possibility that the sale of it may be completed, I inclose his letter to Mr. Hylton with a desire that he will return it to me if the place is sold, otherwise to forward it to Mr Randolph. My best esteem to him and our friends with you. Adieu, my dear. Yours affectionately,

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TO JOHN TAYLOR.[1]

MONTICELLO, December 29, 1794.

DEAR SIR,—I have long owed you a letter, for which my conscience would not have let me rest in quiet but on the consideration that the payment would not be worth your acceptance. The debt is not merely for a letter the common traffic of every day, but for valuable ideas, which instructed me, which I have adopted, and am acting on them. I am sensible of the truth of your observations that the atmosphere is the great storehouse of matter for

[1] François Blanchard, the famous aeronaut, was born in France in 1738, and died there March 7, 1809. In 1785 he made his remarkable voyage in a balloon across the British Channel with Dr. Jeffries, of Boston. For this successful undertaking Blanchard was rewarded by Louis XVI. He made numerous ascensions in Europe and on this side of the Atlantic. See Nouvelle Biographie Générale, tome vi. pp. 188, 189.—EDS.

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recruiting our lands, that though efficacious, it is slow in its operation, and we must therefore give them time instead of the loads of quicker manure given in other countries, that for this purpose we must avail ourselves of the great quantities of land we possess in proportion to our labor, and that while putting them to nurse with the atmosphere, we must protect them from the bite and tread of animals, which are nearly a counterpoise for the benefits of the atmosphere. As good things, as well as evil, go in a train, this relieves us from the labor and expense of cross fences, now very sensibly felt on account of the scarcity and distance of timber. I am accordingly now engaged in applying my cross fences to the repair of the outer ones and substituting rows of peach trees to preserve the boundaries of the fields. And though I observe your strictures on rotations of crops, yet it appears that in this I differ from you only in words. You keep half your lands in culture, the other half at nurse; so I propose to do. Your scheme indeed requires only four years and mine six; but the proportion of labor and

[1] John Taylor, an eminent statesman and agriculturist, was born in Orange County, Virginia, in 1750, and graduated at William and Mary College in 1770. He became a planter, and was greatly interested in the improvement of agriculture. In 1797 he was one of the Presidential Electors, and in the following year he moved in the Virginia House of Deputies the famous resolutions of 1798. He died in Caroline County, Virginia, August 20, 1824. (See Appleton's Cyclopædia of American Biography, vol. vi. p. 45.) This letter is printed from the original in the collection of autographs given to the Mass. Hist. Society by Mr. and Mrs. A. C. Washburn.—Eds.

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rest is the same. My years of rest, however, are employed, two of them in producing clover, yours in volunteer herbage. But I still understand it to be your opinion that clover is best where lands will produce them. Indeed I think that the important improvement for which the world is indebted to Young is the substitution of clover crops instead of unproductive fallows; and the demonstration that lands are more enriched by clover than by volunteer herbage or fallows; and the clover crops are highly valuable. That our red lands which are still in tolerable heart will produce fine clover I know from the experience of the last year; and indeed that of my neighbors had established the fact. And from observations on accidental plants in the fields which have been considerably harrassed with corn, I believe that even these will produce clover fit for soiling of animals green. I think, therefore, I can count on the success of that improver. My third year of rest will be devoted to cowpenning, and to a trial of the buckwheat dressing. A further progress in surveying my open arable lands has shewn me that I can have seven fields in each of my farms where I expected only six; consequently that I can add more to the portion of rest and ameliorating crops. I have doubted on a question on which I am sure you can advise me well, whether I had better give this newly acquired year as an addition to the continuance of my clover, or throw it with some improving crop between two of my crops of grain, as for in-

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stance between my corn and rye. I strongly incline to the latter, because I am not satisfied that one cleansing crop in seven years will be sufficient; and indeed I think it important to separate my exhausting crops by alternations of ameliorators. With this view I think to try an experiment of what Judge Parker informs me he practises. That is, to turn in my wheat stubble the instant the grain is off, and sow turnips to be fed out by the sheep. But whether this will answer in our fields which are harrassed, I do not know. We have been in the habit of sowing only our freshest lands in turnips, hence a presumption that wearied lands will not bring them. But Young's making turnips to be fed on by sheep the basis of his improvement of poor lands, affords evidence that though they may not bring great crops, they will bring them in a sufficient degree to improve the lands. I will try that experiment, however, this year, as well as the one of buckwheat. I have also attended to another improver mentioned by you, the winter vetch, and have taken measures to get the seed of it from England, as also of the Siberian vetch which Millar greatly commends, and being a biennial might perhaps take the place of clover in lands which do not suit that. The winter vetch I suspect may be advantageously thrown in between crops, as it gives a choice to use it as green feed in the spring if fodder be run short, or to turn it in as a green-dressing. My rotation, with these amendments, is as follows:—

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1. Wheat, followed the same year by turnips, to be fed on by the sheep.

2. Corn and potatoes mixed, and in autumn the vetch to be used as fodder in the spring if wanted, or to be turned in as a dressing.

3. Peas or potatoes, or both according to the quality of the field.

4. Rye and clover sown on it in the spring. Wheat may be substituted here for rye, when it shall be found that the second, third, fifth, and sixth fields will subsist the farm.

5. Clover.

6. Clover, and in autumn turn it in and sow the vetch.

7. Turn in the vetch in the spring, then sow buckwheat and turn that in, having hurdled off the poorest spots for cowpenning. In autumn sow wheat to begin the circle again.

I am for throwing the whole force of my husbandry on the wheat-field, because it is the only one which is to go to market to produce money. Perhaps the clover may bring in something in the form of stock. The other fields are merely for the consumption of the farm. Melilot, mentioned by you, I never heard of. The horse bean I tried this last year. It turned out nothing. The President has tried it without success. An old English farmer of the name of Spuryear, settled in Delaware, has tried it there with good success; but he told me it would not do without being well shaded,

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and I think he planted it among his corn for that reason. But he acknowledged our pea was as good an ameliorater and a more valuable pulse, as being food for man as well as horse. The succory is what Young calls Chicoria Intubus. He sent some seed to the President, who gave me some, and I gave it to my neighbors to keep up till I should come home. One of them has cultivated it with great success, is very fond of it, and gave me some seed which I sowed last spring. Though the summer was favorable it came on slowly at first, but by autumn became large and strong. It did not seed that year, but will the next, and you shall be furnished with seed. I suspect it requires rich ground, and then produces a heavy crop for green feed for horses and cattle. I had poor success with my potatoes last year, not having made more than 60 or 70 bushels to the acre. But my neighbors having made good crops, I am not disheartened. The first step towards the recovery of our lands is to find substitutes for corn and bacon. I count on potatoes, clover, and sheep. The two former to feed every animal on the farm except my negroes, and the latter to feed them, diversified with rations of salted fish and molasses, both of them wholesome, agreeable, and cheap articles of food.

For pasture I rely on the forests by day, and soiling the evening. Why could we not have a moveable airy cow house, to be set up in the middle of the field which is to be dunged, and soil our cattle

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in that through the summer as well as winter, keeping them constantly up and well littered? This with me, would be in the clover field of the first year, because during the second year it would be rotting, and would be spread on it in fallow the beginning of the third, but such an effort would be far above the present tyro state of my farming. The grosser barbarisms in culture which I have to encounter are more than enough for all my attentions at present. The dung-yard must be my last effort but one. The last would be irrigation. It might be thought at first view, that the interposition of these ameliorations or dressings between my crops will be too laborious, but observe that the turnips and two dressings of vetch do not cost a single ploughing. The turning the wheat-stubble for the turnips is the fallow for the corn of the succeeding year. The first sowing of vetches is on the corn (as is now practised for wheat), and the turning it in is the flush-ploughing for the crop of potatoes and peas. The second sowing of the vetch is on the wheat fallow, and the turning it in is the ploughing necessary for sowing the buckwheat. These three ameliorations, then, will cost but a harrowing each. On the subject of the drilled husbandry, I think experience has established its preference for some plants, as the turnip, pea, bean, cabbage, corn, etc., and that of the broadcast for other plants as all the bread grains and grasses, except perhaps lucerne and Saint foin in soils and climates very productive

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of weeds. In dry soils and climates the broadcast is better for lucerne and Saint foin, as all the south of France can testify.

I have imagined and executed a mould-board which may be mathematically demonstrated to be perfect, as far as perfection depends on mathematical principles, and one great circumstance in its favor is that it may be made by the most bungling carpenter, and cannot possibly vary a hair's breadth in its form, by but gross negligence. You have seen the musical instrument called a sticcado. Suppose all its sticks of equal length, hold the fore-end horizontally on the floor to receive the turf which presents itself horizontally, and with the right hand twist the hind-end to the perpendicular, or rather as much beyond the perpendicular as will be necessary to cast over the turf completely. This gives an idea (though not absolutely exact) of my mould-board. It is on the principle of two wedges combined at right angles, the first in the direct line of the furrow to raise the turf gradually, the other across the furrow to turn it over gradually. For both these purposes the wedge is the instrument of the least resistance. I will make a model of the mould-board and lodge it with Colonel Harvie in Richmond for you. This brings me to my thanks for the drill plough lodged with him for me, which I now expect every hour to receive, and the price of which I have deposited in his hands to be called for when you please. A good instrument of this kind

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is almost the greatest desideratum in husbandry. I am anxious to conjecture beforehand what may be expected from the sowing turnips in jaded ground, how much from the acre, and how large they will be? Will your experience enable you to give me a probable conjecture? Also what is the produce of potatoes and what of peas in the same kind of ground? It must now have been several pages since you began to cry out "mercy." In mercy then I will here finish with my affectionate remembrance to my old friend Mr. Pendleton, and respects to your fireside, and to yourself assurances of the sincere esteem of dear Sir, your friend and servant.

TO THOMAS MANN RANDOLPH.

MONTICELLO, November 28, 1796.

It is so cold that the freezing of the ink on the point of my pen renders it difficult to write. We have had the thermometer at 12°. My works are arrested in a state entirely unfinished, and I fear we shall not be able to resume them. Clarke has sold our wheat in Bedford for 8s. 6d. and the rise to the first of June, with some other modifications. It appears to be a good sale. He preferred it to 10s. 6d. certain, which was offered him. I think he was right as there is little appearance of any intermission of the war.

I thank you for your letter of news, and am glad

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to see the republican pre-eminence in our assembly. The paper you inclosed me presents a result entirely questionable, according to my own ideas of the subject. The preponderance of the McKean interest in the western counties of Pennsylvania is by no means so great as is there supposed. You will believe the true dispositions of my mind on that subject. It is not the less true, however, that I do sincerely wish to be the second on that vote rather than the first. The considerations which induce this preference are solid, whether viewed with relation to interest, happiness or reputation Ambition is long since dead in my mind. Yet even a well-weighed ambition would take the same side. My new threshing machine will be tried this week. P. Carr is on the point of marriage. All are well here, and join in the hope of your continuing so. Adieu.

TO JOHN TAYLOR.[1]

MONTICELLO, October 8, 1797.

We have much here of an improvement made in the Scotch threshing machine by Mr. Martin, and that you have seen and approved it.[2] Being myself well acquainted with the original *geared* machine and Booker's substitution of *whirls* and *bands* (as I

[1] Printed from the original in the Washburn Collection of Autographs given to the Society.—EDS.

[2] See the letter from Jefferson to Taylor, June 4, 1798.—EDS.

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have one of each kind), it will perhaps give you but a little trouble to give me so much of an explanation as will be necessary to make me understand Martin's, and let it apply, if you please, to the movements by horses or by hand. I must ask the favor of you to get me one of the same drills you sent me before, made in the best manner, with a complete set of bands and buckets, and packed in a box, in pieces, in the most compact manner the workman can do it, and forwarded to me at Philadelphia as soon after the meeting of Congress as possible. It is for a friend, and to go still further, which renders this mode of packing necessary. For the amount when you will make it known, I will either enclose you a bank bill from Philadelphia, or send it you in fine tea or anything else you please to order. How did your turnip seed answer? I have received from England, and also from Italy some seed of the winter vetch, a plant from which I expect a good deal. If it answers I will send you of the seed. I have also received all the good kinds of field pea from England, but I count a great deal more on our southern cow-pea. If you wish any of them, I will send you a part.

I have not yet seen Hamilton's pamphlet;[1] but I understand that finding the strait between Scylla

[1] The pamphlet referred to is the well-known "Observations on Certain Documents contained in No. v. and vi. of 'The History of the United States for the Year 1796,' in which the charge of speculation against Alexander Hamilton, late Secretary of the Treasury, is fully refuted. Written by Himself."—Eds.

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and Charybdis too narrow for his steerage, he has preferred running plump on one of them. In truth, it seems to work very hard with him; and his willingness to plead guilty as to the adultery seems rather to have strengthened than weakened the suspicions that he was in truth guilty of the speculations. Present me respectfully and affectionately to my old friend and file-leader, Mr. Pendleton, and accept yourself my friendly salutations and adieux.

P. S. Your answer by the first or second post will find me here.

TO EDMUND PENDLETON.[1]

PHILADELPHIA, January 14, 1798.

DEAR SIR,—I received some time ago from Mr. Edmund Randolph a note signed by Mr. Lyons and yourself, undertaking to pay the amount of a decree of Royle's administrators v. yourselves as administrators of Robinson to Mr. Short or myself as his attorney. This undertaking is perfectly satisfactory, and I only wait your pleasure to be signified as to the time when and place where it may suit you to make the payment. As it was to depend on the sale of the stock I should suppose this the best market, but of this you will judge.

We receive this day through the public papers news by the way of Norfolk of some stern interrog-

[1] Pr nted from the original in the Washburn Collection of Autographs given to the Massachusetts Historical Society.—EDS.

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atories put to our envoys by the French Directory. They look so like truth that they cannot fail to make an impression. We are willing to hope that France will not push her resentments to a declaration of war, but we have not entire confidence in the moderation of certain people among ourselves. On the whole our situation is truly perilous. Congress is at present lying on its oars. There is nothing of the least importance to be taken up. They will begin to-morrow to talk about Blount and Mr. Liston. This may fill up some hours as well as lounging, and furnish something for the blank pages of their journals; but unless our envoys furnish us something to do, I do not see how we can contrive even the semblance of business through February.

I avail myself with great pleasure of this opportunity of recalling our ancient recollections; and it has been with great satisfaction that I have heard

[1] William Blount, lately Governor of the Territory south of the Ohio, and a senator from Tennessee, was charged with having been engaged in a conspiracy for transferring New Orleans and the neighboring districts from the Spanish to the British. Upon information, furnished in part by Robert Liston, the British envoy to the United States from 1796 to 1802, which had been laid before Congress, the House of Representatives voted in July, 1797, to impeach him. Two days later, after hearing counsel, the Senate voted to expel him. This did not, however, end the matter, and in January, 1798, it was again brought before the House of Representatives, which proceeded to elect managers. It was not finally disposed of by the Senate until the end of that year. Blount died shortly afterward. See Hildreth's History of the United States, vol. v. pp. 88, 89, 187, 281, 282; Annals of Congress, 5th Congress, vols. i.–iii. *passim;* also the copy of a letter from Timothy Pickering to Rufus King, in the Pickering Papers, belonging to the Massachusetts Historical Society, vol. xxxvii. leaves 196, 197.—Eds.

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from time to time of the great portion of health you have enjoyed and still enjoy. That it may continue through all the years you wish is the prayer of, my dear Sir, your affectionate friend and servant.

TO JOHN TAYLOR.[1]

PHILADELPHIA, June 4, 1798.

I now enclose you Mr. Martin's patent.[2] A patent had actually been made out on the first description, and how to get this suppressed and another made for a second invention, without a second fee, was the difficulty. I practised a little art in a case where honesty was really on our side, and nothing against us but the rigorous letter of the law, and having obtained the first specification and got the second put in its place, a second patent has been formed, which I now inclose with the first specification.

I promised you, long ago, a description of a mould-board. I now send it; it is a press copy and therefore dim. It will be less so by putting a sheet of white paper behind the one you are reading. I would recommend to you first to have a model made of about 3 inches to the foot, or $\frac{1}{4}$ the real dimensions, and to have two blocks, the first

[1] Printed from the original in the Washburn Collection of Autographs given to the Massachusetts Historical Society.—EDS.

[2] A patent for a "wheat-thrashing machine" was issued to T. C. Martin, June 2, 1798. His residence is not given in the Index to the United States Patents.—EDS.

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of which, after taking out the pyramidal piece and sawing it crosswise and below, should be preserved in that form to instruct workmen in making the large and real one. The second block may be carried through all the operations, so as to present the form of the mould-board complete. If I had an opportunity of sending you a model I would do it. It has been greatly approved here, as it has been before by some very good judges at my house, where I have used it for five years with entire approbation.

Mr. New showed me your letter on the subject of the patent, which gave me an opportunity of observing what you said as to the effect with you of public proceedings, and that it was not unusual now to estimate the separate mass of Virginia and North Carolina with a view to their separate existence. It is true that we are completely under the saddle of Massachusetts and Connecticut, and that they ride us very hard, cruelly insulting our feelings as well as exhausting our strength and substance. Their natural friends, the three other eastern States, join them from a sort of family pride, and they have the art to divide certain other parts of the Union so as to make use of them to govern the whole. This is not new. It is the old practice of despots to use a part of the people to keep the rest in order, and those who have once got an ascendency and possessed themselves of all the resources of the nation, their

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revenues and offices, have immense means for retaining their advantages. But our present situation is not a natural one. The body of our countrymen is substantially republican through every part of the Union. It was the irresistible influence and popularity of General Washington, played off by the cunning of Hamilton, which turned the government over to anti-republican hands, or turned the republican members, chosen by the people, into anti-republicans. He delivered it over to his successor in this state, and very untoward events, since improved with great artifice, have produced on the public mind the impression we see; but still, I repeat it, this is not the natural state. Time alone would bring round an order of things more correspondent to the sentiments of our constituents; but are there not events impending which will do it within a few months? The invasion of England, the public and authentic avowal of sentiments hostile to the leading principles of our Constitution, the prospect of a war in which we shall stand alone, land-tax, stamp-tax, increase of public debt, etc., Be this as it may, in every free and deliberating society there must, from the nature of man, be opposite parties and violent dissensions and discords; and one of these, for the most part, must prevail over the other for a longer or shorter time. Perhaps this party division is necessary to induce each to watch and delate to the people

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the proceedings of the other. But if on a temporary superiority of the one party, the other is to resort to a scission of the Union, no federal government can ever exist. If to rid ourselves of the present rule of Massachusetts and Connecticut we break the Union, will the evil stop there? Suppose the New England States alone cut off, will our natures be changed? are we not men still to the south of that, and with all the passion of men? Immediately we shall see a Pennsylvania and a Virginia party arise in the residuary confederacy, and the public mind will be distracted with the same party spirit. What a game, too, will the one party have in their hands by eternally threatening the other that unless they do so and so, they will join their Northern neighbors. If we reduce our Union to Virginia and North Carolina, immediately the conflict will be established between the representatives of these two States, and they will end by breaking into their simple units. Seeing, therefore, that an association of men who will not quarrel with one another is a thing which never yet existed, from the greatest confederacy of nations down to a town meeting or a vestry, seeing that we must have somebody to quarrel with, I had rather keep our New England associates for that purpose than to see our bickerings transferred to others. They are circumscribed within such narrow limits, and their population so full, that their numbers will ever be the minority, and they are marked,

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like the Jews, with such a peculiarity of charater as to constitute from that circumstance the natural division of our parties. A little patience, and we shall see the reign of witches pass over, their spells dissolve, and the people, recovering their true sight, restore their government to its true principles. It is true that in the meantime we are suffering deeply in spirit, and incurring the horrors of a war and long oppressions of enormous public debt. But who can say what would be the evils of a scission, and when and where they would end. Better keep together as we are, haul off from Europe as soon as we can, and from all attachments to any portions of it. And if we feel their power just sufficiently to hoop us together, it will be the happiest situation in which we can exist. If the game runs sometimes against us at home we must have patience till luck turns, and then we shall have an opportunity of winning back the *principles* we have lost, for this is a game where principles are the stake. Better luck, therefore, to us all; and health, happiness, and friendly salutations to yourself. Adieu.

P. S. It is hardly necessary to caution you to let nothing of mine get before the public. A single sentence, got hold of by the Porcupines, will suffice to abuse and persecute me in their papers for months.

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TO THOMAS MANN RANDOLPH.

PHILADELPHIA, January 17, 1799.

I wrote to my dear Martha Dec. 27, and to yourself Jan. 3. I am afraid my nailery will stop from the want of rod. Three tons were sent from hence Dec. 11. The vessel was blown off the capes and deserted by the crew. She has been taken up at sea and carried into Albemarle Sound. We are in hopes, however, of getting off another supply from here immediately as the river bids fair to open. The shutting of the river has prevented any tobacco coming here as yet; so nothing is known about price. At New York the new tobacco is thirteen dollars. Georgia has sent a much larger quantiy there than had been expected, and of such a quality as to place it next to the Virginia. It is at eleven dollars while the tobacco of the Carolinas and Maryland are but ten dollars. I suspect that the price will be at its maximum this year. Whether that will be more than thirteen dollrs I do not know, but I think it will. When this city comes into the market, it must greatly increase the demand. We know too that immense sums of cash are gone and going on to Virginia, such as were never before heard of. Every stage is loaded. Some pretend here it is merely to pay for last year's tobacco, but we know that that was in a considerable degree paid for; and I have no doubt that a great part of this money is to purchase the new crop. If I were

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offered thirteen dollars in Richmond, perhaps I should take it, for the sake of securing certain objects, but my judgment would condemn it. Wheat here is 1.75. Dr. Bache sets out for our neighborhood next month early, having concluded absolutely to settle there. He is now breaking up his house and beginning to pack. Dr. Logan tells me Dupont de Nemours is coming over, and decided to settle in our neighborhood. I always considered him as the ablest man in France. I ordered Bache's papers for you from Jan. 1.[1] The moment I can get answers from the Postmasters of Charlottesville and Milton to letters I wrote them a fortnight ago, we shall have the error of our mail corrected. It will turn out, I believe, to have taken place here by making up the mail a day too late, which occasioned a loss of a week at Fredericksburg. The bankrupt bill was yesterday rejected in the H. of R. by a majority of three. Logan's law will certainly pass.[2] Nobody mistakes the object of it. The forgery they attempted to palm on the House, of a memo-

[1] The "Aurora," which violently opposed the administration of Washington and Adams, was published by Benjamin Franklin Bache, a grandson of Dr. Franklin.—Eds.

[2] The act here referred to was passed Jan. 30, 1799, and made it a criminal offence, punishable by a fine and imprisonment, for any citizen of the United States, without the permission of his own government, to carry on any verbal or written correspondence or intercourse with any foreign government or its agents in regard to any disputes with the United States. The act was occasioned by some unauthorized communications made to the French government by Dr. George Logan, afterward a Senator of the United States from Pennsylvania. (See Appleton's Cyclopædia of American Biography, vol. iv. p. 4.)—Eds.

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rial falsely pretended to have been drawn and presented by Logan, is so completely detected, as to have thrown infamy on the whole proceeding, but a majority will still go through with it. The army and navy are steadily pursued. The former, with our old troops, will make up about 14,000 men, and consequently cost annually seven millions of dollars. The navy will cost annually five and one-half millions, but as it will not be on foot, no addition to the direct tax will be made at this session, nor perhaps at the next. It is very evident from circumstances that a window tax is intended. A loan for five millions is opened at 8 per cent. The extravagance of the interest will occasion it to fill. This it is supposed will build the navy. Our taxes bring in this year ten and one half-millions clear, and the direct tax will add two millions. According to the principles settled by a (British) majority of the commissioners under the treaty, that demand will be from fifteen to twenty millions of dollars, but there is some reason to suppose our government will not yield to it. In that case they must recur to new negotiations. Notwithstanding the forgeries of London, Vienna, and Constantinople, it is believed that Bonaparte will establish himself in Egypt, and that that is, for the present at least, his ultimate object. Also that the insurrection in Ireland is in force and better organized than before. My warmest love to my dear Martha and the little ones; to yourself affectionate salutations and Adieu.

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TO JOHN TAYLOR.[1]

MONTICELLO, November 26, 1799.

DEAR SIR,—Mr. Wirt, who is of my neighborhood, offers himself a candidate for the clerkship of the House of Representatives, and being known to few of the members, his friends are naturally anxious that what may be said of him with truth should be said.[2] I only fulfill a duty, therefore, when I bear testimony in this as I would in any other case. He has lived several years my near neighbor, having married the daughter of the late Dr. Gilmer. He is a person of real genius and information, one of the ablest at the bars in this part of the country, amiable and worthy in his private character, and in his republicanism most zealous and active. This information is given you in order that having equal knowledge of the other candidates you may be enabled to satisfy your own mind by choosing the best.

For some years past there has been a project on foot for making a more direct road across this State for those travelling between the North and South.

[1] Printed from the original in the Washburn Collection of Autographs given to the Massachusetts Historical Society.—EDS.

[2] William Wirt, the eminent lawyer, was born in Bladensburg, Md., Nov. 8, 1772, and died in Washington, D. C., Feb. 18, 1834. He began his legal career in Virginia, and in 1795 he was married to the daughter of Dr. George Gilmer. She died in 1799, and he removed to Richmond, and was elected Clerk of the House of Delegates. His legal knowledge, his eloquence, and his rare ability in argument placed him in the foremost rank of American lawyers. (See Appleton's Cyclopædia of American Biography, vol. vi. pp. 578, 579.)—EDS.

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It is only necessary to open it in parts, as there are already roads through a great proportion of the way. It is to lead from Georgetown by Stevensburg, Norman's ford, the Raccoon ford, Martin King's ford, the mouth of Slate River, to the High bridge on Appomattox, from whence the present roads southwardly suffice. It will shorten the line across this State probably fifty miles, is calculated on the precise object of avoiding all hills, but at the crossing of the principal watercourses, and will undoubtedly be the best road for the principal mail between the North and South. This matter will be before you this session, and will be worthy your attention.

Some schismatic appearances and other political circumstances will render it necessary for us perhaps to adapt our conduct to their improvement. But I cease from this time during the ensuing twelvemonth to write political letters, knowing that a campaign of slander is now to open upon me, and believing that the postmasters will lend their inquisitorial aid to fish out any new matter of slander they can to gratify the powers that be. I hope my friends will understand and approve the motives of my silence. Health, happiness, and affectionate salutations.

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TO THOMAS MANN RANDOLPH.

February 4, 1800.

Yours of Jan. 18 never reached me till this day, so that it has loitered a week somewhere. Our post going out to-morrow morning, I hasten to answer it. My anxiety to get my lands rented is extreme. I readily agree, therefore, that Mr. Kerr shall take for five years, or say till Christmas, 1804, the oblong square field, and the one on the river next below the square field, comprehending the orchard; only that I should be very urgent he should take a complete field there; for I expect there is enough between the river and the road by old Hickman's settlement to make two fields of forty acres each, by cleaning up and straightening the skirts, perhaps by cutting down some slips on the margin. For so much as would be to clear I would take no rent the first year. He would then have the three fields in a line on the river, and three other fields would remain along the road to the triangle inclusive for another tenant. Observe I must have with him, as I have with Mr. Peyton, free passage along the roads; that is to say, along the road which used to be, and must be again, down the river side. All the conditions to be the same as with Mr. Peyton. I say I wish him to be pushed to the taking the one hundred and twenty acres; yet, rather than lose a tenant, I

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would agree to the hundred acres, to wit, the oblong square and half the lower field. But you are sensible he would get by that means a great overproportion of cream, and therefore I wish to force on him the other half field.

Bonaparte's operations begin to wear a somewhat better aspect. It seems as if he meant a republic of some sort; therefore we are encouraged by the strength of his head to hope he calculates correctly how much superior is the glory of establishing a republic to that of wearing a crown. But still we must suspend our judgments a little longer. My first letter from Mr. Eppes gave me a little hope of the child's doing well. One received to-day announces its death. It appears, as we might expect, a severe affliction to both.

TO THOMAS MANN RANDOLPH.

PHILADELPHIA, March 4, 1800.

DEAR SIR,—I wrote you last on the 17th of February. Since that I learn by a letter from Richmond that Martha is with her sister. My last letter from Eppington was of the 16th of Feb., when Maria was hoped to be in fair way of speedy recovery. The continuance of the non-intercourse law for another year, and the landing of our commissioners at Lisbon, have placed the opening of the French market (where at Bordeaux tobacco was

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selling at twenty-five to twenty-seven dollars per cwt. Dec. 7) at such a distance that I thought it better to sell our tobacco at New York. Remsen had informed me in January that no more than six dollars could then be got for it, and it has been falling since; and Lieper offering to take it there at six dollars payable in sixty days, I struck with him; and thus ends this tragedy by which we have both lost so much. I observe Tarina advertised; how does that matter stand? There have been no new failures here or at New York, but at Baltimore very great ones weekly. We are entirely without news of the further proceedings at Paris. Bonaparte seems to be given up by almost everyone. The caucus election bill for President and Vice-President will certainly pass the Senate by the usual majority of 2 to 1; an amendment will be proposed to shew the sense of the minority. This may perhaps, however, be taken up by the other house with a better chance of success; in order to lessen the necessary loan, they put off building the 74's a year, which, with the saving by stopping enlistments, reduces the loan to three and one-half millions; but whether even that can be got at 8 per cent is very doubtful. Wheat is at $2.13 here, and is likely to be very high through the year, as Europe will want generally. I think I shall fix my price with Mr. Higginbotham at about the middle of April. I have not heard how it is at Richmond. Key's money was sent on to Richmond

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Jan. 30. Yet on the 20th of Feb. (three weeks after) he seems not to have heard of it. Kiss all the little ones for me, and accept sincere and cordial salutations from yours affectionately.

TO THOMAS MANN RANDOLPH.

PHILADELPHIA, April 4, 1800.

I wrote you last on the 31st of March, since which I have received G. Jefferson's of March 22, acknowledging the receipt of the last two hundred and seventy dollars, making eighteen hundred and seventy dollars in all. Mr. Ross's Kitt, setting out for Charlottesville, where he has a cause to be tried with James Ross, and apprehending from him some personal assault, has asked me to interest some person to ensure him the protection of the laws. I have promised to write to yourself, P. Carr, and Colonel Bell, to have an eye to him, merely because he desires it, though I assured him he would be protected by every one. He furnishes me an earlier occasion of writing to you than by post.

Captain Barry, in the frigate U. S., arrived last night from Corunna. Our envoys [1] landed Nov 27

[1] Oliver Ellsworth, William R. Davie and William Vans Murray had been appointed by President Adams envoys extraordinary to the French Republic. The two former sailed from Newport, R. I., about the first of November, 1799, in the frigate United States. The latter was then in Eu ope. See Life and Works of John Adams, vol. ix. pp. 39, 162, 251.—EDS.

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at Lisbon, from whence their secretaries proceeded by land to Paris. The principals reimbarked Dec. 21 for L'Orient, but after long beating against contrary winds in the Bay of Biscay they landed at Corunna Jan. 11, and sent a courier to Paris for their passports. They proceeded to Burgos and here received their passports from Paris, with a letter from Talleyrand expressing a desire to see them at Paris, and assuring them that the form of their credentials addressed to the Directory, would be no obstacle to their negotiation. Murray was already at Paris. The letters from our envoys to the Executive, brought by Captain Barry, are dated at Burgos, Feb. 10. They would have about [*illegible*] to Paris, where they will have arrived probably about the first week in March, and by the first week of May we may expect to hear of their reception. The frigate Portsmouth is about sailing from New York to France, the object a secret. The Senate yesterday rejectd Mr. Pinckney's bill against appointing judges to any other offices; and to-day they have rejected a bill from the House of Representatives which forbade military troops to be at the place of election on any day of election. A warrant has been issued to commit Duane,[1] but he has not yet been found. The President has nominated a third Major General (Brookes of Massachusetts) to our 4000 men, and 204 promotions and appoint-

[1] William Duane, editor of the "Aurora," the principal organ of the Republicans.—Eds.

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ments of officers are now before the Senate for approbation, so there will be sixteen regiments of officers and four or five of soldiers. Dupont de Nemours has been here from New York on a visit. He will settle there or at Alexandria. He promises me a visit this summer with Madame Dupont. I think we shall rise the first or second week in May. I have received the grateful news of Maria's recovery, and am to go by Eppington or Montblanco to carry her to Monticello with me. I shall by next post write to Richardson the day my horses are to meet me there, all three; and expect him to engage David Bowles to go with them. Not knowing whether Martha is yet returned home, I can only deliver my love to her provisionally, and my affectionate salutations to yourself. Adieu.

P. S. You have not informed me where your brother's newspapers are to be directed.

TO EDMUND PENDLETON.[1]

PHILADELPHIA, April 19, 1800.

DEAR SIR,—My duties here require me to possess exact knowledge of parliamentary proceedings. While a student I read a good deal, and common-

[1] This letter is printed from the original in the collection of autographs given to the Massachusetts Historical Society by Mr. and Mrs. A. C. Washburn.—EDS.

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placed what I read on this subject.[1] But it is now 20 years since I was a member of a parliamentary body, so that I am grown rusty. So far, indeed, as books go, my commonplace has enabled me to retrieve, but there are many minute practises, which being in daily use in Parliament, and therefore supposed known to every one, were never noticed in their books. These practices were, I dare say, the same we used to follow in Virginia, but I have forgot even our practices. Besides these, there are minute questions arising frequently as to the mode of amending, putting questions, etc., which the books do not inform us of. I have, from time to time, noted these queries, and keeping them in view have been able to get some of them satisfied, and struck them off my list, but I have a number of them still remaining unsatisfied. However unwilling to disturb your repose, I am so anxious to perform the functions of my office with exact regularity that I have determined to throw myself on your friendship and to ask your aid in solving as many of my doubts as you can. I have written them down, leaving a broad margin in which I only ask the favor of you to write yea, or nay, opposite to the proposition, which will satisfy me. Those which you do not recollect, do not give yourself any trouble about. Do it only at your leisure. If this should be before the 9th of

[1] The commonplace book here referred to is probably a small and very neatly written volume, marked on the fly-leaf "Parliamentary Note-Book," now in the possession of the Massachusetts Historical Society.—Eds.

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May, your return of the papers may find me here till the 16th; if after that, be so good as to direct them to me at Monticello.

I have no foreign news but what you see in the papers. Duane and Cooper's trials come on to-day. Such a selection of jurors has been made by the marshal as ensures the event. The same may be said as to Fries, etc., and also as to the sheriff and justices, who in endeavoring to arrest Sweeny, the horse thief, got possession of his papers, and sent them to the Chief Justice and the Governor, among which papers were Mr. Liston's letter to the Governor of Canada, printed we know not by whom. We have not yet heard the fate of Holt, editor of the Bee, in Connecticut. A printer in Vermont is prosecuted for reprinting Mr. McHenry's letter to General Darke. Be so good as to present my respects to Mrs. Pendleton, and friendly salutations to Mr. Taylor, and accept yourself assurances of constant and affectionate esteem.

TO THOMAS MANN RANDOLPH.

PHILADELPHIA, May 7, 1800.

Yours of April 26 came to hand the 2d inst. We have received information, not absolutely to be relied on, that our envoys are arrived at Paris and were received with peculiar favor. I have seen a letter from a person there of the best information,

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dated in January, that the dispositions of the present government were so favorable that a *carte blanche* would be given to our envoys and that it would not be in their power to avoid a settlement. The New York city election has resulted in favor of the republican ticket. I inclose you a state of it. This is considered by both parties as deciding the legislative majority in that State, without taking into account what we shall gain in the country elections. The Federalists do not conceal their despair on this event. They held a caucus on Saturday night, and have determined on some hocus-pocus manœuvres by running General Charles C. Pinckney with Mr. Adams to draw off South Carolina, and to make impression on North Carolina. We still count on rising on the 12th; perhaps we may be a day or two later, though it is generally expected otherwise. I shall not set out till the day, or day after, we rise.

You were not mistaken in your first idea that your tobacco was nearly sufficient for the payment to George Jefferson. I paid him 1870 dollars. Your Philadelphia tobacco came to 1537.325 and the New York supposed about 280 dollars. This, when it all comes in, will consequently be within a few dollars of what I paid; and as to the delay, I have apologized for that to those for whom my money was destined. A little before I left Monticello I attempted a statement of our account. But we had let it run so long that it called for more time than I

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had left. I therefore brought on the materials here, and have stated it except as to one or two articles which need enquiry. I do not believe there will be a balance of 10 dollars either way, including every thing I know of to the present moment. The money, therefore, in Mr. Jefferson's hands, which you destined for me, is free for other purposes. I sincerely wish I were able to aid you in the embarrassments you speak of. But though I have been wiping out Mr. Wayles's old scores it has been impossible to me to avoid some new ones. The profits of my Bedford estate have gone for this purpose, and the unprofitable state of Albemarle has kept me in a constant struggle. There is a possible sale which might enable me to aid you, and nothing could be so pleasing to me, but it is only possible. I would wish you, however, to avoid selling anything as long as you can, to give time for this possibility. These things, however, will be better explained in conversation. Present my constant love to my dear Martha and the little ones, and accept assurances of the most affectionate attachment to yourself. Adieu.

TO THOMAS MANN RANDOLPH.

WASHINGTON, Sunday, Nov. 30, 1800.

Davy will set out in the morning on his return with the horses. I will endeavor before he goes to get one of Hamilton's pamphlets for you, which

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are to be sold here. Bishop's pamphlet on political delusions has not yet reached the bookstores here.[1] It is making wonderful progress, and is said to be the best anti-republican eye-water which has ever yet appeared. A great impression of them is making at Philadelphia to be forwarded here. From abroad we have no news. At home, the election is the theme of all conversation. Setting aside Pennsylvania, Rhode Island, and South Carolina, the Federal scale will have from the other States 53 votes and the Republicans 58. Both parties count with equal confidence on Rhode Island and South Carolina. Pennsylvania stands little chance for a vote. The majority of two in their Senate is immovable. In that case, the issue of the election hangs on South Carolina. It is believed Pinckney will get a complete vote with Mr. Adams from four of the New England States, from Jersey, Delaware and Maryland, probably also North Carolina. Congress seems conscious they have nothing [to do?]; the territorial government here and the additional judiciary system [being?] the only things which can be taken up. The Federals do not appear very strong in the House of Representatives. They divided on the address only 35 against 32. We are better accommodated here than we expected to be, and not a whisper or

[1] The reference is to Abraham Bishop's "Connecticut Republicanism: an Oration on the Extent and Power of Political Delusion, delivered in New Haven on the evening preceding the Public Commencement, September, 1800." It passed through several editions. —Eds.

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thought in any mortal of attempting a removal. This evident solidity to the establishment will give a wonderful spring to buildings here the next season. My warmest affection to my ever dear Martha, kisses to the young ones, and sincere and affectionate attachment to yourself. Adieu.

P. S. Mr. Brown called on me to-day. The family is well. I forgot to mention to him that Davy could carry letters to Mr. Trist and family.

TO THOMAS MANN RANDOLPH.

WASHINGTON, December 5, 1800.

You are probably anxious to hear of the election, and indeed it is the only thing of which any thing is said here, and little known even of it. The only actual vote known to us is that of this State. Five for Adams and Pinckney and 5 for Jefferson and Burr. Those who know the Pennsylvania legislature best agree in the certainty of their having no vote. Rhode Island has carried the Federal ticket of electors by about 200 in the whole State. Putting Pennsylvania, South Carolina, and Pinckney out of view, the votes will stand 57 for Jefferson and 58 for Adams. So that South Carolina will decide between these two. As to Pinckney it is impossible to foresee how the juggle will work It is confidently said that Massachusetts will withhold seven votes from him, but little credit is due to reports where every

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man's wishes are so warmly [*illegible*]. If the Federal electors of the other States go through with the caucus compact, there is little doubt that South Carolina will make him the President. Their other vote is very uncertain. This is everything known to us at present. The post which will arrive here on the 15th inst. will bring us the actual vote of South Carolina. The members here are generally well accommodated. About a dozen lodge in Georgetown from choice, there being lodgings to be had here if they preferred it. Everybody is well satisfied with the place, and not a thought indulged of ever leaving it. It is therefore solidly established, and this being now seen it will take a rapid spring. My tenderest love to my dear Martha and the young ones. Affectionate and warm attachment to yourself. Adieu.

TO THOMAS MANN RANDOLPH.

December 12, 1800.

I believe we may consider the election as now decided. Letters received from Columbia, (S. C.), this morning and dated Dec. 2, which was the day for appointing their electors, announce that the Republican ticket carried it by majorities of from 13 to 18. The characters named are firm and were to elect on the next day. It was intended that one vote should be thrown away from Colonel Burr. It is believed Georgia will withhold from him one or two. The

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votes will stand probably T. J. 73, Burr about 70. Mr. Adams 65. Pinckney probably lower than that. It is fortunate that some difference will be made between the two highest candidates, because it is said that the Federals here held a caucus and came to a resolution that in the event of their being equal they would prevent an election, which they could have done by dividing the House of Representatives. My tender love to my dear Martha and the little ones. Sincere affection to yourself.

TO THOMAS MANN RANDOLPH.

WASHINGTON, January 9, 1801

DEAR SIR,—Your favor of the third came to hand yesterday. I suspect that I mistook our post day when I first arrived here and put the letters you mention into the post-office a day too late. I shall be glad if you will mention when that of the first instant gets to you as well as the present and future letters, that if there be anything wrong in the post I may get it rectified. The mail for Milton is made up here on Friday at 5 p. m. That Craven's house should not have been in readiness surprises me. I left I. Perry's people putting up the last course of shingles and the plank for the floor and loft planed, and they assured me they could finish everything in a week. They must have quit immediately. But the most extraordinary of all things is that there should have been

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no clearing done. I left Monticello on Monday, the 24th Nov., from which time there were four weeks to Christmas, and the hands ordered to be with Lilly that morning (except, I think, two), and according to his calculation and mine three or four acres a week should have been cleared. But the misunderstanding between him and Richardson had before cost me as good as all the labor of the hired hands from January to June when I got home. The question now, however, is as to the remedy. You have done exactly what I would have wished, and as I place the compliance with my contract with Mr. Craven before any other object, we must take every person from the nailery able to cut and keep them at it till the clearing is completed. The following, therefore, must be so employed: Davy, John, Abram, Shepherd, Moses, Joe, Wormly, Jame Hubbard, with the one hired by Lilly, making 9. Besides these, if Barnaby, Ben, Cary, and Isabel's Davy are able to cut, as I suppose they are, let them also join; shoemaker Phill also if he can cut. I doubt it, and that he had better continue to be hired. These make thirteen or fourteen, with whom the clearing which I was to do this year ought not to be a long job. There will remain for the nailery Burwell, Jamy, Bedf. John, Bedf. Davy, Phill Hub., Lewis, Bartlet, and Brown, enough for two fires. This course I would have pursued even after Powell's arrival, as I had rather [*illegible*] his department, where the loss concerns myself only than one which affects another. I wrote

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pressingly to Mr. Eppes to hire some hands for me, and am not without hopes he may have done it. If they arrive, I would still not draw off the nailers till the clearing is completed. I wrote to Lilly yesterday covering an order for some money. I had not then received your letter, so the one to him says nothing on this subject. I must, therefore, get the favor of you to deliver him the orders.

Nothing further can be said or discovered on the subject of the election. We have eight votes in the House of Representatives certain, and there are three other States, Maryland, Delaware, and Vermont, from either of which if a single individual comes over it settles the matter. But I am far from confiding that a single one will come over. Pennsylvania has shown what men are when party takes place of principle. The Jersey election has been a great event. But nothing seems to bend the spirit of our opponents. I believe they will carry their judiciary bill. As to the treaty, I must give no opinion. But it must not be imagined that any thing is too bold for them. I had expected that some respect to the palpable change in public opinion would have produced moderation, but it does not seem to. A committee reported that the Sedition Law ought to be continued, and the first question on the subject in the House has been carried by 47 against 33. We have a host of Republicans absent. Gallatin, Livingston, Nicholson, Tazewell, Cabell, *cum multis aliis*. The mercantile towns are almost

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unanimous in favor of the treaty.[1] Yet it seems not to soften their friends in the Senate. I received notices from Dick Johnson to attend the taking depositions in Milton on the second Saturday in February and the second Saturday in March at Mr. Price's. I do not expect his witnesses have any thing material to say. However, if it should not be inconvenient to you to ride there at the hour of 12 and to ask any questions which may be necessary to produce the whole truth, I shall be obliged to you. My unchangeable and tenderest love to my ever dear Martha and to the little ones: affectionate attachment to yourself. Adieu.

TO THOMAS MANN RANDOLPH.

WASHINGTON, January 23, 1801.

Yours of the 17th reached this on the 21st, from Saturday to Wednesday. This will leave this place to-morrow (Saturday, the 24th), and ought to be with you on Thursday, the 29th, but it seems that a week is lost somewhere. I suspect the Fredericksburg rider leaves that place an hour or two before the Northern post reaches it. On this subject I will this day write to the Postmaster General. I am sincerely concerned for the misfortune to poor Holmes. I have not yet seen his father on the sub-

[1] The treaty which had been negotiated with France by the envoys sent out by Mr. Adams. See Life and Works of John Adams, vol. ix, pp. 241–310.—EDS.

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ject, who is a clerk in the Register's office here. Lewis must continue under Mr. Dinsmore, in order to expedite that work. I will very willingly undertake to pay Gibson and Jefferson for you £135, but I must take from 40 to 70 days for it, having nothing at my disposal sooner. I am not sure of being able to do it at the first term (March 1), but possibly may. At the second (April 1), they will have the money in their own hands for my tobacco sold and payable then, but do not consider this as engaging your hands. If you can employ them more advantageously for yourself than by hiring, do it. If not, we will take any which you had rather hire than employ at what we are to pay for others. My former letter will have conveyed to you my wish that the nailers able to cut should be so employed; and I have written to Mr. Eppes that I am indifferent whether Powell comes till the first of April. I shall then be at home, and shall engage Whateley to undertake to build the new shop, out and out, on his own terms, immediately. I forgot to ask the favor of you to speak to Lilly as to the treatment of the nailers. It would destroy their value, in my estimation, to degrade them in their own eyes by the whip. This, therefore, must not be resorted to but in extremities; as they will be again under my government, I would choose they should retain the stimulus of character. After Lilly shall have completed the clearing necessary for this year for Mr. Craven, I would have him go on with what will be

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wanting for him the next year, that being my most important object. The building of the negro houses should be done whenever Mr. Craven prefers it; as all the work is for him, he may arrange it. I will thank you to continue noting the day of the receipt of my letters, that I may know whether the postmaster corrects the mismanagement.

We continue as uncertain as ever as to the event of an election by the House of Representatives. Some appearances are favorable, but they may be meant to throw us off our guard. Mr. Adams is entirely for their complying with the will of the people. Hamilton the same. The mercantile or paper interest also. Still, the individuals who are to decide will decide according to their own desires. The Jersey election damps them, so does the European intelligence, but their main body is still firm and compact. My tenderest love to my dear Martha. I wrote to her the last week. Kisses to all the little ones, and affectionate attachments to yourself. Adieu.

P. S. When I come home I shall lay off the canal, if Lilly's gang can undertake it. I had directed Lilly to make a dividing fence between Craven's fields at Monticello and those I retain. The object was to give me the benefit of the latter for pasture. If I stay here, the yard will be pasture enough and may spare, or at least delay, this great and perishable work of the dividing fence. At least

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it may lie for further consideration. I hope Lilly keeps the small nailers engaged so as to supply our customers in the neighborhood, so that we may not lose them during this interregnum. Mr. Higginbotham, particularly, and Mr. Kelly, should be attended to.

TO MARTHA JEFFERSON RANDOLPH.

WASHINGTON, January 26, 1801.

MY DEAR MARTHA,—I wrote to Mr. Randolph on the 9th and 10th inst., and yesterday received his letter of the 10th. It gave me great joy to learn that Lilly had got a recruit of hands from Mr. Allen, though still I would not have that prevent the taking all from the nailery who are able to cut, as I desired in mine of the 9th, as I wish Craven's ground to be got ready for him without any delay. Mr. Randolph writes me you are about to wean Cornelia; this must be right and proper. I long to be in the midst of the children, and have more pleasure in their little follies than in the wisdom of the wise. Here, too, there is such a mixture of the bad passions of the heart, that one feels themselves in an enemy's country. It is an unpleasant circumstance, if I am destined to stay here, that the great proportion of those of the place who figure are Federalists, and most of them of the violent kind. Some have been so personally bitter that they can never forgive me, though I do

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them with sincerity. Perhaps in time they will get tamed. Our prospect as to the election has been alarming; as a strong disposition exists to prevent an election, and that case not being provided for by the Constitution, a dissolution of the government seemed possible. At present there is a prospect that some, though Federalists, will prefer yielding to the wishes of the people rather than have no government. If I am fixed here, it will be but three easy days' journey from you, so that I should hope you and the family could pay an annual visit here at least; which with mine to Monticello of the spring and fall, might enable us to be together four or five months of the year. On this subject, however, we may hereafter converse, lest we should be counting chickens before they are hatched. I inclose for Anne a story, too long to be got by heart but worth reading. Kiss them all for me, and keep them in mind of me. Tell Ellen I am afraid she has forgotten me. I shall probably be with you the first week in April, as I shall endeavor to be at our court for that month. Continue to love me, my dear Martha, and be assured of my unalterable and tenderest love to you. Adieu.

P. S. Hamilton is using his uttermost influence to procure my election rather than Colonel Burr's.

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TO THOMAS MANN RANDOLPH.

WASHINGTON, January 29 [1801].

Yours of the 24th came to hand last night. On application to the Postmaster General it seems that I should have put my letters into the office here on the Thursday instead of Friday. This accordingly goes to the office this day, which is Thursday, and therefore ought to get to you on Thursday next. It may very likely, therefore, go with my letter of the 23d.

I am very glad, indeed, to find that Lilly has got so strong a gang, independent of yours and the nailers. With respect to yours, I wish you to do exactly what is most for your own interest, either keeping them yourself or putting any of them with mine as best suits your own convenience. I still think it will be better that such of the nailers as may be able to handle the axe should be employed with it till April, that is to say, till Powell comes. It will be useful to them morally and physically, and I have work enough of that kind with the canal and road to give them full employment. Perhaps, as the blowing to be done in the canal will be tedious, it might be worth while to keep Joe and Wormely employed on that in all good weather; if you think so, they should work separately, as I think that one hand to hold the auger and one to strike is throwing away the labor of one. There should be force enough kept in the nailery to supply our standing custom-

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ers. There is another reason for employing only the weaker hands in the nailery. I do not believe there is rod to emply the whole any length of time, and none can be got to them till April. I should be glad [if] Mr. Lilly or Mr. Dinsmore would count the fagots on hand, and inform me of the quantity by return of post, as I have forgotten the state of the supplies on hand when I left home. Mr. Wilson Nicholas and myself have this day joined in ordering clover seed from New York, where it is to be had, it is said, at twelve dollars. I have ordered five bushels for you. I believe I have none to sow myself. Mr. Jefferson informs me two small casks of wine are forwarded for me to Milton. Out of this I wish to you take what I borrowed of you, and I will be thankful to you to inform me as soon as you can of the size of the casks, that I may know how to proportion the equivalent to Mr. Yznardi. It should be stored in the dining-room cellar, and that secured by double locks, as I presume it is. With respect to the election, there is no change of appearance since my last. The main body of the Federalists are determined to elect Burr or to prevent an election. We have eight States certain; they six, and two divided. There are six individuals of moderate disposition, any one of which coming over to us will make a ninth vote. I dare not trust more through the post. My tender love to my ever dear Martha and to the little ones. I believe I must ask her to give directions to Goliah

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and his senile corps to prepare what they can in the garden, as it is very possible I may want it. Accept assurances of my sincere affection. Adieu.

TO THOMAS MANN RANDOLPH.

WASHINGTON, March 12, 1801.

DEAR SIR,—I mentioned to you in my letter by Mr. Nicholas that I should be able by this post to fix a day for the departure of Davy Bowles with my chair and horses, and that he should be in readiness; though it is impossible for me to say to a day when I can set out from hence, yet I expect it may be by the time you receive this. I would therefore have him set off from Monticello on Saturday the 21st inst. and come to Mr. Heron's in Culpeper, half a mile this side of Mr. Strode's, where he will arrive on Sunday the 22d, and will wait for me till I get there, which, if nothing unexpected occurs, will be on that or the next day. But circumstances might arise which might detain me longer, in which case he must wait here. It is probable Mr. Strode will press him much to go with the horses to his house, but he must be charged expressly to continue at Heron's, which is a house of entertainment. My stay at home cannot exceed a fortnight, or a very few days over that.

I am still at a great loss, Mr. Madison not having been able to come on as yet, Mr. Gallatin not agree-

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ing to join us till my return,[1] and not knowing as yet where to get a Secretary of the Navy; General Smith refused, so did Mr. Langdon. I am now pressing again on General Smith, but with little hope of his acceding; in that case my distress will be very great. Hitherto appearances of reunion are very flattering, in all the States south of New England. A few removals from office will be indispensable. They will be chiefly for real malconduct, and mostly in the offices connected with the administration of justice. I shall do as little in that way as possible. This may occasion some outcry; but it must be met. One removal will give me a great deal of pain, because it will pain you [*illegible*] it would be inexcusable [in] me to make that exception. The prostitution of justice by packing of juries cannot be passed over. Embrace my dear Martha for me a thousand times, and kisses to the young ones. To yourself affectionate esteem and attachment.

TO THOMAS MANN RANDOLPH.

WASHINGTON, March 26, 1801.

I am still here, and not yet absolutely certain of the moment I can get off. I fear I shall this evening receive a fourth refusal of the Secretaryship of the

[1] James Madison was the new Secretary of State, and Albert Gallatin the new Secretary of the Treasury, but the latter did not take office immediately. See Lanman's Biographical Annals, p. 506.—EDS.

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Navy. Should it take place, I have fixed on a temporary arrangement, and in any event expect to get away in the course of two or four days, so as to be with you by the time you receive this or very soon after. It is the getting the naval department under way which alone detains me. My tenderest affections to my ever dear Martha and to the little ones. Friendly attachment to yourself.

TO CATHARINE CHURCH.[1]

WASHINGTON, March 27, 1801.

I owe you a letter, my dear young friend. It is a debt I pay with pleasure, and therefore should not have so long delayed but for the importunity of others more urging and less indulgent. I thank you for your kind congratulations on the proof of public esteem lately bestowed on me. That you write in these sentiments renders them more dear to me. The post is not enviable, as it affords little exercise for social affections. There is something within us which makes us wish to have things conducted in our own way and which we generally fancy to be in patriotism. This ambition is gratified by such a position. But the heart would be happier

[1] Catharine Church was the daughter of John B. Church, of New York, an intimate friend of Alexander Hamilton, and of Angelica Schuyler, his wife, Early in 1802 she was married to Bertram P. Cruger, by whom she had a large family. (See N. Y. Genealogical and Biographical Record, vol. vi. pp. 78, 79.) Her mother had long been a friend and correspondent of Jefferson.—EDS.

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enjoying the affections of a family fireside. It is more than six weeks since I heard from Maria. This is a proof of her aversion to her pen, and must be her apology for not answering your letter, which she received in due time, and resolved to answer every day for a month before I parted with her last. She continues to love you as much as ever, and would give you, as she does me, every proof of it except writing letters. She is in a fair way to be again a mother. This will prevent her meeting me at home, in a short excursion I am about making thither. Mrs. Randolph always recollects you with her former affection. She is the mother of four children, and half of another. I shall endeavor to persuade them to come and see me here sometimes, and will not be without hopes it may tempt you to take a flying trip, which, in summer, is of three days only. Present my friendly respects to Mr. and Mrs. Church, and accept yourself assurances of my constant and affectionate attachment.

TO THOMAS MANN RANDOLPH.

WASHINGTON, May 14, 1801.

I take up my pen merely because I have not written to you since my arrival here, and simply to inform you I am well. I shall be happy to hear the same from you, and hope this day's post may bring me that information, or that Fontrees's wagon will do it, which, I expect, will arrive to-morrow or next

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day. We are selling off all our vessels except the 13 frigates established by law, bringing 7 of them to this place and sending out 3 to take exercise. The expense will be reduced to about half a million annually, great part of which will be paid this year by the proceeds of the sales of the others. We fear that Spain is ceding Louisiana to France, an inauspicious circumstance to us. Mr. Gallatin's arrival yesterday renders the organization of our new administration complete, and enables us to settle our system of proceeding. Mr. and Mrs. Madison and Miss Payne are lodging with us till they can get a house. Great desires are expressed here that Patsy and Maria should come on, but that I give no hopes of till autumn. My tenderest affections to Patsy and kisses to the young ones. Sincere attachment and friendly salutations to yourself.

P. S. I have engaged a capital whitesmith, who is a nailer also, to go on from Philadelphia in July.

TO THOMAS MANN RANDOLPH.

WASHINGTON, February 21, 1802.

DEAR SIR,—I am made happy by the regular accounts of the health of the inhabitants of Edgehill. Here there has been an uncommon degree of sickness, ascribed, of couse, to the mild winter, though we cannot see why. The Housc of Representatives have now been a week debating the judiciary law,

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and scarcely seem to be yet on the threshold of it. I begin to apprehend a long session; however, I believe all material matters recommended in the first day's message will prevail. The majority begins to draw better together than at first. Still there are some wayward freaks which now and then disturb the operations.

I know nothing of the person from Loudon who went to take Shadwell, having never heard of him till your letter. In a letter to Mr. Craven, which he received on the day of the date of yours, I expressed a wish that he could bring some good tenant to it; and as the man happened to be with him that very day, he made an agreement with him to take all, except the yard, on Peyton's terms; but as to the yard, that remains to be arranged. I have written to him on the subject.

I forward you two newspapers presenting two versions of Hamilton's speeches. The language of insurgency is that of the party at present, even in Congress. Mr. Bayard,[1] in a speech of seven hours, talked with confidence of the possibility of resistance by arms. They expect to frighten us, but are met with perfect *sang froid*. Present my warmest affections to my ever dear Martha and the little ones, and be assured of my constant and sincere attachment.

[1] James A. Bayard of Delaware, one of the most eminent and influential Federalists in the House of Representatives. He strenuously resisted the appeal of the Judiciary Act.—Eds.

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TO THOMAS MANN RANDOLPH.

WASHINGTON, December 19, 1803.

DEAR SIR,—The post of last night brings us agreeable information from New Orleans and Natchez. General Wilkinson arrived at New Orleans from Mobile Nov. 25, settled immediately with Laussat all the circumstance of the delivery, and proceeded next day to Fort Adams, where he would arrive on the 30th, and expect to meet Claiborne there ready for embarkation. On the 29th Laussat demanded possession of the Spanish officers, who instantly agreed to deliver the place on the next day (30th) at noon and every thing was arranged for that purpose. Laussat meant to garrison the forts with militia, and to appoint a person to every office civil and military to take the place of the Spanish incumbents. In all this he acted in concert with Clarke, mixing many Americans in the offices, and giving the command of the militia to a friend of Clarke's. Claiborne embarked 100 militia Dec. 1, from Natchez for Fort Adams, and set out Dec. 2 by land for the same place, expecting to fall in with and carry on to that place 80 militia more. He would find Wilkinson there with all the regulars ready for embarkation, which probably took place on the 3d or 4th, and they would arrive at New Orleans the 6th or 7th. If on the 6th, we shall hear of it Christmas night; if not till the 7th, we shall not hear it till the night of New

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Year's day.[1] The Marquis of Casa Calva had ordered the barracks to be got ready to receive and accommodate our troops, and proposed to embark all his own, the moment he had delivered the place, on board an armed vessel then lying ready to receive them; so that they will be gone before the arrival of our troops. Laussat would hold the government about a week. This is for yourself and Mr. Eppes.[2] My tender love to my dear Martha and Maria, and all the young ones, and affectionate salutations to yourself and Mr. Eppes.

TO MARTHA JEFFERSON RANDOLPH.

WASHINGTON, Oct, 7, 1804.

MY DEAR MARTHA,—I arrived here this day week, having travelled through the rain of that day rather than stay in disagreeable quarters. I experienced no inconvenience from it. The Marquis Yrujo arrived two days after me, and Mr. Madison and General Dearborn got here the last night. The latter has left his family in Maine for the winter. Yrujo is said to be very ill, taken two days ago. I enclose a magazine for Jefferson, merely for the sake of the plate which may add to the collection for his room.[3] You

[1] For an account of the delivery of Louisiana to the United States, see Henry Adams's History of the United States, vol. ii. p. 256.—EDS.

[2] Maria, Jefferson's youngest surviving daughter, had married her half-cousin, John Eppes, October 13, 1797. She died April 17, 1804. —EDS.

[3] Thomas Jefferson Randolph, Jefferson's eldest grandson, was then about twelve years old.—EDS.

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will see in the magazine an account of a new work by Mrs. Robinson, Mrs. Cosway, and Mrs. Watson, which must be curious.[1] A great deal of sickness has been and still exists in this place: I trust, however, that the hard frosts we had a week ago have destroyed the germ of new cases. The sickness of the summer has been so general that we may consider the exemption of our canton from it as very remarkable. Four weeks to-morrow our winter campaign opens. I dread it on account of the fatigues of the table in such a round of company, which I consider as the most serious trials I undergo. I wish much to turn it over to younger hands and to be myself but a guest at the table and free to leave it as others are; but whether this would be tolerated is uncertain. I hope Mr. Randolph, yourself, and the dear children continue well. I miss you all at all times, but especially at breakfast, dinner, and the evening, when I have been used to unbend from the labors of the day. Present me affectionately to Mr. Randolph, and my kisses to the young ones. My tender and unchangeable love to yourself. Adieu, my ever dear daughter.

[1] This may have been the "Progress of Female Virtue and of Female Dissipation," a set of aquatints, designed by Maria Cosway, and executed by Caroline Watson. See Dictionary of National Biography, vol. xii. p. 279, vol. lx. p. 10.—EDS.

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TO GEORGE JEFFERSON.

WASHINGTON, June 12, 1805.

DEAR SIR,—Mr. John D. Burke of Petersburg, engaged in writing the history of Virginia has asked the use of a volume of laws and some volumes of ancient newspapers from the library at Monticello. I have desired Mr. Randolph to send them to you, and will pray you to deliver the volumes of newspapers to Mr. Burke himself; but the volume of laws being the only copy of the laws of that period now existing, and being consequently often resorted to in judiciary cases, I wish it to remain in Richmond, where others who may have occasion, as well as Mr. Burke, may have such free access as is consistent with the safe keeping of the volume. This may be in the office of any careful clerk who will undertake it for Mr. Burke, or wherever else you may think proper to deposit them. I have directed these volumes to be sent you well packed in a water-tight box, so that they may be safe from rubbing and wet, and will pray you to have them returned to me with like care when Mr. Burke is done with them. Accept affectionate salutations.

TO JAMES OGILVIE.[1]

WASHINGTON, June 23, 1806.

DEAR SIR,—As Mr. Randolph might possibly be from home and the inclosed in that case be opened by

[1] See Dictionary of National Biography, vol. xlii. p. 18. The letter here printed refers to the bitter quarrel between Thomas Mann Ran-

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my daughter, I have taken the liberty of putting it under your cover with a request to put it into his own hands. The subject of it is perhaps unknown to my daughter, and may as well continue so. Its object is to induce Mr. Randolph to act with coolness and an attention to his situation in this unhappy affair between him and J. R., which the newspapers are endeavoring to revive. It is not inclination in any body, but a fear of the opinion of the world which leads men to the absurd and immoral decision of differences by duel. The greatest service, therefore, which Mr. T. M. Randolph's friends can render him is to convince him that although the world esteems courage and disapproves of the want of it, yet in a case like his, and especially where it has been before put out of doubt, the mass of mankind and particularly that thinking part whose esteem we value, would condemn in a husband and father of a numerous family everything like forwardness in this barbarous and lawless appeal. A conduct cool, candid, and merely defensive is quite as much as could be admitted by any in such a case as his; and I verily believe that if such a conduct be observed on his part, the matter may yet die away. I should be unwilling to have it known that I meddle at all in this, and therefore write to you in confidence. Accept my friendly salutations and assurances of esteem and respect.

dolph and John Randolph, of Roanoke, near the end of the first session of the ninth Congress. See Garland's Life of John Randolph, vol. i. pp. 242-351; Randall's Life of Thomas Jefferson, vol. iii. pp. 164-167.—EDS.

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TO THOMAS MANN RANDOLPH.

WASHINGTON, Nov. 3, 1806.

DEAR SIR,—Yesterday was sennight I wrote to Reuben Lewis, informing him he might hourly expect his brother there. I meant the next day, which was the post day, to have written it to you also, but was in the intervening evening taken with the autumnal fever so as to be unable to write. The attack was slight and I am now perfectly recovered, and engaged in taking the repeating doses of bark.

We have no information of the progress of our negotiations either at London or Paris, and I have no hope of our learning their conclusion before the meeting of Congress. Indeed it seems as if Spain would be able to protract the latter, in spite of what either we or France can do to spur her up. We have no doubt of the death of Mr. Fox in the course of September, although none of the stories yet received are worth notice.[1] Mr. Erskine is arrived here and is to be presented to-day, and Mr. Merry will at the same time take leave.[2]

Bond, who was his mentor when formerly here, is, we are told, like a good Vicar of Bray, gone over to the new ministry.[3] In the quarter of Natchitoches

[1] Charles James Fox died of dropsy, Sept. 13, 1806.—EDS.

[2] Anthony Merry was British minister to the United States from 1803 to 1806, and was succeeded by David M. Erskine, who was here until October, 1809.—EDS.

[3] Phineas Bond, a native of Philadelphia, was British consul-general for the Middle and Southern States from 1786 to 1812 or 1813. See Report of the American Historical Association for 1896, vol. i. pp. 513–517.—EDS.

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I believe every thing will remain quiet. Burr is unquestionably very actively engaged in the westward in preparations to sever that from this part of the Union. We learn that he is actually building 10 or 15 boats able to take a large gun and fit for the navigation of those waters. We give him all the attention our situation admits; as yet we have no legal proof of any overt act which the law can lay hold of. Present my tenderest affections to my dear Martha and the young ones, and accept assurances yourself of constant attachment.

TO MARTHA JEFFERSON RANDOLPH.

WASHINGTON, November 23, 1807.

MY DEAR MARTHA,—Here we are all well, and my last letters from Edgehill informed me that all were so there, except some remains of influenza hanging on yourself. I shall be happy to hear you are entirely clear of its remains. It seems to have gained strength and malignancy in its progress over the country. It has been a formidable disease in the Carolinas, but worst of all in Kentucky; fatal, however, only to old persons. Davy will set out on his return to-morrow. He will carry an earthen box of monthly strawberries, which I must put under Anne's care till spring, when we will plant them at Monticello. I have stuck several sprigs of geranium in a pot which contained a plant supposed to be orange, but not known to be so.

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We have little company of strangers in town this winter. The only ladies are the wives of Messrs. Newton, Thurston, W. Alston, Marion, Mumford, Blount, Adams, Cutts, and Mrs. McCreary expected. Congress are all expectation and anxiety for the news expected by the Revenge or by Colonel Monroe, whose immediate return, however, may be doubted. The war-fever is past, and the probability against its return rather prevalent. A caucus of malcontent members has been held and an organized opposition to the government arranged, J. R. and J. C. at its head;[1] about 20 members composed it. Their object is to embarrass, avoiding *votes of opposition* beyond what they think the nation will bear. Their chief mischief will be done by letters of misrepresentations to their constituents, for in neither house, even with the assured aid of the Federalists, can they shake the good sense and honest intentions of the mass of real Republicans. But I am tired of a life of contention and of being the personal object for the hatred of every man who hates the present state of things. I long to be among you, where I know nothing but love and delight, and where instead of being chained to a writing table I could be indulged as others are with the blessings of domestic society and pursuits of my own choice. Adieu, my ever dear Martha; present me affectionately to Mr. Randolph and the family.

[1] John Randolph, of Roanoke, and Joseph Clay, one of the members from Pennsylvania. See Hildreth's History of the United States, vol. vi. pp. 64, 65.—Eds.

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TO THOMAS MANN RANDOLPH.

WASHINGTON, NOV. 22, 1808.

DEAR SIR,—I inclose a letter from Jefferson to Ellen which I presume will inform the family of his health. I sent for your perusal last week a letter from Dr. Wistar, strongly urging his attendance on the chemical lectures. We had supposed, you know, that it would be best for him to confine himself, while at Philadelphia, to those branches of science for which that place has peculiar advantages, that is to say, anatomy, natural history, and botany, and even to add a course of surgery, as entirely subordinate to the others and merely as a convenient acquisition for a country gentleman. These would give him two lectures a day through the week, which I thought would be as much as he could digest. However, as Dr. Wistar placed his attendance on the chemical lectures on the footing of his having time enough, and so did Mr. Peale also, and the lectures were beginning, I consented to it if you should not object. For a scientific man in a town nothing can furnish so convenient an amusement as chemistry, because it may be pursued in his cabinet; but for a country gentleman I know no source of amusement and health equal to botany and natural history, and I should think it unfortunate for such an one to attach himself to chemistry, although the general principles of the science it is certainly well to understand.

Congress has as yet come to no resolution indica-

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tive of their dispositions. But to-morrow the ground work will be laid by two resolutions: 1. That the violations of our rights by the belligerents ought not to be submitted to. 2. That all intercourse with the belligerent powers and their dependancies be suspended. This will leave the question of war or embargo uncommitted, and perhaps it will be thought best not to decide between them till near the close of the session. It is thought very doubtful how they would decide it at present, many believing there is a majority for war. This party will perhaps lose ground by time, and especially as a suggestion has been made to make another effort by offering categorically to both belligerents to elect between a repeal of their edicts and war, tightening the embargo in the mean time. This idea, however, is as yet only in embryo. My sincere affections attend on my dear Martha, yourself, and the children.

TO CHARLES L. BANKHEAD.[1]

WASHINGTON, Nov. 26, 1808.

DEAR SIR,—Your favor of the 22d is received, and that to Jefferson forwarded. I have made it the occasion of advising him to avoid the subject of politics in society, and generally indeed to shun disputa-

[1] Husband of Jefferson's eldest grandchild, Anne Cary, daughter of Thomas Mann and Martha (Jefferson) Randolph. Mrs. Bankhead was born in January, 1790, and died February 11, 1826, less than five months before the death of her grandfather.—EDS.

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tion on every subject, which never did convince an antagonist, and too often alienates a friend, besides being always an uneasy thing to a good-humored society. Your letter does not tell me whether Anne and yourself are well, but I presume it because you have written, and she is about to write. I receive with great pleasure your assent to my proposition of contubernation until the population of the hive shall force a swarm, or the crowd of clients call for and afford a separate establishment. I shall be at home about the middle of April, and were it not that I must proceed on the track of my caravan, which will be on the road, I would cross at Boyd's Hole, and take you up at Port Royal, and have the pleasure of paying my respects to your father and family, and of assuring them of the happiness I shall ever have in their visits to our hive. But you must do me the favor to assure them of this, and I must pursue the caravan to keep up stragglers and prevent the season of planting from getting ahead of me.

We are all politics here. Of the three alternatives, submission and tribute is scouted by three-fourths from the heart, and by the other fourth from the teeth outwards. Of the other two, embargo and war, the first will probably prevail as yet, and the final decision between them be kept off to near the close of the session, when the season would admit of action. The odds and ends of different factions, which make up the schismatic fourth, will give their weight to whatever proposition leads to war with France and

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submission to England. You will see that one of them has already proposed the former. Assure my dear Anne of my constant love, and accept yourself my most friendly salutations.

TO ANNE CARY BANKHEAD.

WASHINGTON, Dec. 8, 1808.

MY DEAR ANNE,—Your letter of Nov. 26 came safely to hand, and in it the delicious flower of the Acacia, or rather the Mimosa Nilotica, from Mr. Lomax. The mother tree of full growth which I had when I gave him the small one, perished from neglect the first winter I was from home. Does his produce seed? If it does I will thank him for some, and you to take care of them; although he will think it a vain thing at my time of life to be planting a tree of as slow a growth. In fact the Mimosa Nilotica and Orange are the only things I have ever proposed to have in my green house. I like much your choice of books for your winter's reading. Middleton's Life of Cicero is among the most valuable accounts we have of the period of which he writes; and Tacitus I consider as the first writer in the world without a single exception. His book is a compound of history and morality of which we have no other example. In your arithmetic, if you keep yourself familiar with the four elementary operations of addition, subtraction, multiplication, and division, or rather of addition and division, because this last includes subtrac-

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tion and multiplication, it is as much as you will need. The rule of three, of universal utility, is a thing of mere common-sense; for if one yard of cloth costs three dollars, common-sense will tell you that twenty yards will cost twenty multiplied by three. I inclose you a letter from Jefferson, which I presume will inform you he is well. Present my respects to Mr. Bankhead, and the good family you are with; also to my ancient and intimate friend Mr. Lomax when you have the opportunity. To yourself my affectionate love.

TO THOMAS MANN RANDOLPH.

WASHINGTON, Dec. 13, 1808.

DEAR SIR,—Jefferson wrote to me a few days ago to know whether he had ever had the smallpox, and added that till he could learn that fact he kept himself from the anatomical dissections, by advice of Dr. Wistar. I wrote him that I thought I recollected that he and Anne were inoculated in Richmond under your eye, but that I was not quite certain. Will you be so good as to give the answer by return of post that he may not lose the benefit of the dissections longer than necessary. We received last night the votes of New York: 13 for Madison, as President, and Clinton, Vice-President; 6 for Clinton, President, 3 Madison, Vice-President, and 3 Monroe, Vice-President. I inclose you two extra papers with the news from Europe. The inferences drawn from this infor-

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mation are that Bonaparte has settled every thing amicably in the North, that peace between Russia and Sweden will be the consequence of their armistice, and probably the exclusion of England from the Baltic, and that Bonaparte will be left to execute his murderous purposes on Spain and Portugal at his leisure.

Here every thing is still uncertain. There is a sincere wish to take off the embargo before Congress rises, prevailing with everybody but the Federalists, who (notwithstanding their clamors) it is perfectly known would deprecate it as their greatest calamity. The difficulty is how to separate the belligerents so as to have trade with one while we have war with the other; because a war with both continues the embargo in effect, with war added to it. Perhaps time may be taken till early in summer to get a repeal of edicts by one party, and Congress meet in May or June to declare war against the other. But this is conjectural. My love to my dear Martha and the young ones, and affectionate attachment to yourself.

TO THOMAS MANN RANDOLPH.

WASHINGTON, Jan. 2, 1809.

DEAR SIR,—The general mind of Congress seems now to be rallying to a certain course of proceeding. A bill will be brought in to-morrow for convening Congress about the middle of May. It will be of course that in the debate members will declare the

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intention to be then to take off the embargo and if the belligerent edicts be not repealed to issue letters of marque and reprisal. This will let Europe see that our purpose is war, while not expressing it authoritatively. It will not engage their pride to persevere; at the same time it would quiet our own people by letting them see the term when the embargo is to cease. It had been thought that this would suffice to keep every thing quiet, but the monarchists of the North (who have been for some time fostering the hope of separation) have been able to make so successful use of the embargo as to have federalized the South Eastern States and to endanger New York, and they mean now to organize their opposition by the regular powers of their State governments. The Massachusetts legislature which is to meet the middle of this month, it is believed, will call a convention to consider the question of a separation of the Union, and to propose it to the whole country east of the North River, and they are assured of the protection of Great Britain. Their Republican members think that, if we will fix by law a day when the embargo shall cease (as some day in June), that this will satisfy so great a portion of their people as to remove the danger of a convention. This will probably be consented to with an addition that letters of marque and reprisal shall issue the same day. But they are apprehensive this addition may defeat the effect hoped from the repeal of the embargo. We must save the Union; but we wish to sacrifice as little as possible of

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the honor of the nation. But our difficulties do not end here; for if war takes place with England, we have no security that she will not offer neutrality and commerce to New England, and that the latter will not accept it. In the mean time it is possible that England may be wrought upon, 1, by the documents published at the meeting of Congress which prove our fair conduct towards both countries, which she had affected not to believe; 2, by the determination of the Presidential election; 3, by the failure, so far, of expected insurrections in Massachusetts; 4, by the course of affairs in Spain, where there can be little doubt that Joseph is re-enthroned before this day. Parts of the country will hold out for a while, but the ultimate issue must very soon be visible. If these things have the effect they ought to have on a rational government they will prevent a war with us. The non-intercourse law will be past. This is a summary view of our present political condition.

I received yesterday a letter from Martha, enclosing the one which I now return. The request of Mr. Stith is impossible. We left to the delegates of every State to name all the officers for their State, so that there is not a single vacancy. She also desired me to return Moultrie's letter, but that has been necessarily filed in the war office. Mr. Moultrie is placed on the list of cadets at West Point, but cannot be called into service till the spring, when he will receive a call. This answer you can give him. Nothing stands in the way of Mr. Hackley but the continuance of an old

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servant of the public in the place. I think it probable he will resign; I am sure he would have done it had Mr. Hackley had the prudence to cultivate his friendship. He was led astray by Meade, and now discovering Meade's views on the office, I suspect they are separated. Mr. Madison will, however, be equally ready to accept Yznardi's resignation and appoint Mr. Hackley his successor.

Accept my affectionate salutations, and convey the same to my ever dear Martha and the young ones.

P. S. A letter of Dec. 28, from Jefferson, informs me he was well.

TO CHARLES L. BANKHEAD.

WASHINGTON, Jan. 19, 1809.

DEAR SIR,—I have waited till I could execute Anne's commission as to the seed of the ice-plant, before acknowledging the receipt of her letter of Dec. 19 and yours of the 20th. I now inclose the seed, in the envelope of a pamphlet for Doctor Bankhead's acceptance. The case of Whistelo belongs to the physician, although here presented as a case of law. I do not suppose, however, it will add to his knowledge as a physician, or to yours as a lawyer, but it may amuse you both.

Although Congress has passed no bill which indicates their course, except the amendatory embargo bill, yet I think their minds are substantially made up

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to meet in May with the avowed intention of then ending the embargo, and of issuing letters of marque and reprisal against the nations which shall have decrees against our rightful commerce then existing. About minor and preparatory measures there is difference of opinion, but on this none except from the Federalists, the Apostates, and two or three honest Republicans from the South, who (these last I mean) wish to try the embargo till the fall. In the mean time the disquietude in the North is extreme, and we are uncertain what extent of conflagration a spark might occasion. A line seems now to be drawing between the really republican Federalists and the English party, who are devoted, soul and body, to England and monarchy. There are circumstances which render it not entirely unexpected that England will repeal her decrees. This alone can save us from war in May. By that time, we hope, the militia or volunteers called for will be in readiness. I am now engaged in packing and breaking up my establishment here. I suppose I shall be detained to the middle of March. Mr. Lomax writes me he has given Anne a small plant of the Acacia for me, with which I hope I shall meet you both at Monticello in March. I salute you both with great affection.

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TO THOMAS MANN RANDOLPH.

WASHINGTON, Jan. 31, 1809.

DEAR SIR,—I received in due time your kind letter of the 20th. Certainly I shall be much pleased to receive your aid and counsel in the management of my farms, which will become so essential. My whole life has been passed in occupations which kept me from any minute attention to them, and finds me now with only very general ideas of the theory of agriculture, without actual experience; at a time of life, too, when the memory is not so retentive of observation as at an earlier period. The tracts of land which I proposed to you to endeavor to sell are such as can be of little use to our family. I have acquired or kept them to furnish timber, but I am certain I never got an half per cent on their value in a year yet. A property yielding so little profit had better be sold and converted into more profitable form, and none can be more profitable, that is, yield so much happiness, as the payment of debts, which are an unsufferable torment. Sharp and Crenshaw, who live near Pouncey's, told me they would rather undertake to crop on that land than on the best red land you or myself possessed. If you could find a purchaser, therefore, it might be at a price that might remove some more pressing calls. Perhaps the owner of Colle would buy the tract adjoining that. They can never be put to a better use, or one so pleasing to me, as in relieving your more valuable property from calls, and

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whether they go to pay your debts or mine is perfectly equal to me, as I consider our property as a common stock for our joint family.

The bill for the meeting of Congress on the 4th Monday of May is past. The resolution of Mr. Nicholas for repealing the embargo and issuing letters of marque and reprisal on a [——] day was taken up yesterday. The impatience of the people to the eastward has had a sensible effect on the minds of Congress. John Randolph moved to strike out the [——] and insert *immediately*. This was rejected. He meant an immediate removal of the embargo, and to strike out the substitute of letters of marque and reprisal. Three days have been proposed for the blank, Feb. 15, Mar. 4, and June 1. The question will be between the two last. I rather expect the 1st of June will be preferred, but it is doubtful even now, and the sentiment of the legislature is obviously advancing on account of the discontents to the eastward. On these it is difficult to pronounce an opinion. A forcible opposition to the embargo laws may be expected; perhaps it will be countenanced by their legislature declaring the law unconstitutional. It is believed they will call a convention of the Eastern States, and perhaps propose separation. The time which this will take, will defeat the measure, by the expiration of the laws which is the ostensible ground of the procedure. With the Essex Junto it is ostensible only. Separation and annexation to England is their real object.

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But not so with the people, or even the real Federalists of the prominent kind. If we can avoid deeds of force on the land (in the execution of the law) the difficulty may pass over. But I do not think even that certain. I am not certain that if war be commenced against England, they will not accept neutrality and commerce if offered by England. Thus we are placed between the alternatives of abandoning our rights on the ocean, or risking a severance of the Union. My ultimate hope is in the good sense of the body of the people to the eastward who will think more dispassionately when the final question is proposed to them. My tender love to my dear Martha and the young ones, and affectionate salutations to yourself.

TO WILLIAM PINCKNEY.[1]

MONTICELLO, July 15, 1810.

DEAR SIR,—I again trouble you with letters from Mr. Bradbury to his friends in England. He is a

[1] William Pinckney, eminent both as a lawyer and statesman, was born in Annapolis, Md., March 17, 1764. His first purpose was to become a physician, but he afterward determined to adopt the law as a profession, and was admitted to the bar in 1786. Ten years later he was appointed one of the commissioners under Jay's treaty, to determine the claims of American merchants for losses occasioned by acts of the English government. He remained in England until 1804, and in the following year he was appointed Attorney-General of Maryland. In 1806 he was again sent to England to treat with the English government as joint commissioner with Mr. Monroe; and after Mr. Monroe's return he was made resident minister, which post he filled until 1811. Subsequently he was Attorney-General of the

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botanist and naturalist of high qualifications and merit, and is now engaged in exploring Upper Louisiana. I feel a real interest in his pursuits, the result of which so far is communicated in some of these letters. On politics I have little to say, and little need be said to you who are better informed from another quarter. You will have seen that Massachusetts, New Hampshire, and Rhode Island have got back to the ground which a temporary delusion induced them to quit for a moment. Unfortunately it was a moment decisive of our destiny. I speak of that which produced a repeal of the embargo. Considerable discontent was certainly excited in Massachusetts, but its extent was magnified infinitely beyond its reality, and an intrigue of (I believe) not more than two or three members, reputed Republicans, excited in Congress a belief that we were under the alternative of civil war or a repeal of the embargo and the embargo was repealed. Thus were we driven by treason among ourselves from the high and wise ground we had taken, and which, had it been held, would have either restored us our free trade, or have established manufactures among us. The latter object will still be obtained, at least as to household manufacture, which is more than the half in

United States, a member of the House of Representatives, minister to Russia and special envoy to Naples, and member of the Senate from 1819 to his death at Washington, Feb. 25, 1822. (See Appleton's Cyclopædia of American Biography, vol. v. p. 26; Lanman's Biographical Annals, p. 337.) Jefferson has inadvertently written the name Pinckney.—Eds.

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value of what we have heretofore received from abroad. But the imprudent adventures of our merchants have put into the hands of the robbers by sea and land, much of the capital which the embargo had secured for employment in manufactures. I am supremely happy in being withdrawn from these turmoils, but cannot but interest myself for my friends still engaged in them, and wishing you all "a good deliverance," I beg leave to add to yourself the assurances of my friendly attachment and high respect.

TO MARY PAGE.[1]

MONTICELLO, Mar. 4, 1811.

DEAR MADAM,—Your favor of Jan. 2 by some unusual course of the post was near a month before it reached this place, to which a further delay has been added by my absence of upwards of a month from home, to which I returned but two days ago. I make it among my first duties to acknowledge its receipt, to offer this apology for so late a reply, and to

[1] This lady was, perhaps, connected by marriage with the family of Gov. John Page, an early and life-long friend of Jefferson. In the letter to which this is an answer, she says her son John T. Page "is at present out of employment," and "seems to think he can act as manager over a few negroes, or perhaps as an under clerk." "He read law for a short time with General Minor." She adds: "My object is to get him in some employment immediately, and thinking your regard for his deceased father will induce you to try to get him into some business encourages me to apply to you." She wishes the answer to her application to be "directed to Mill Wood, Frederick County, Virginia."—EDS.

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give you assurances of the pleasure I should receive from any act of service I could render any member of my late friend's family. His merit, and my estimation of it authorized him to count on any attentions which his friends could render to his family. To my wishes, however, of being useful, my present situation is not friendly, and the want of a more particular knowledge of Mr. J. T. Page's views, acquirements, and habits of life, render it difficult even to suggest any openings for occupation which might suit him. You mention the place of a clerk as one he would be willing to undertake. There are at Washington a great number of clerkships in the offices of the departments of the government, which offer an easy service, and salaries equal to the maintenance of a single man. I know also, however, that the vacancies in them are not frequent and the competitors numerous. The friendship of the President, I am sure would induce him to befriend your son, in case of any vacancy. Should he prefer the occupation of the law in the Western country, one of those you mention as within his view, it would certainly make him more independent and contented. His success in that would depend on himself alone and would open a prospect of bettering his situation. The army and navy offer frequent openings for appointment, in which again we might count on the friendship of the President. If any thing which either myself or my friends can do may aid him in any pursuit wherein our agency can be used, I freely tender every good office I can render

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him, and avail myself with great pleasure of this occasion of renewing to you the assurances of my friendship and attachment and offering the homage of my sincere and high respect.

TO JAMES MADISON.

MONTICELLO, April 7, 1811.

DEAR SIR,—Your favors of Mar. 18 and April 1 have been duly received. The extract from Armstrong's letter of July 28, '08, which you desire is in these words: "My poor friend Warden[1] writes to you, and asks from you the appointment of consul for this place. I could not promise to do more than send his letter. He is an honest and amiable man, with as much Greek and Latin and chemistry and theology as would do for the whole corps of consuls; but, after all, not well qualified for business. You have seen an order of scavans, really well informed, who, notwithstanding, scarcely knew how to escape from a shower of rain when it happened to beset them. He is of that family. No, the man for this place ought to be a man of business, as well as a gentleman." He then goes on to put Leavenworth's pretensions out of the way, should he have proposed himself. The letter is headed "private," although relating as much to public as private transactions.

[1] David B. Warden. He had been Secretary of Legation under Armstrong, when the latter was minister to France, and was for many years consul-general at Paris.—EDS.

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What I saw of Warden during the ten days or fortnight he staid here, satisfied me that he merited all the good which Armstrong says of him, and that he was by no means the helpless and ineffective man in business which he represents him to be. I knew, when I received the letter, that Armstrong's fondness for point and pith rendered it unsafe to take what he said literally. He is cynical and irritable and implacable. Whether his temper or his views induced his dismission of Warden, his persecution of him now will render public benefit by the development of his character. I have never heard a single person speak of Warden who did not rejoice in his appointment, and express disapprobation of Armstrong's conduct respecting him; and I am perfectly satisfied that, if the appointment is made to attract public attention it will be approved. The other subject of uneasiness which you express must, I know, be afflicting. You will probably see its effect in the secret workings of an insatiable family. They may sow discontent, but will neither benefit themselves nor injure you by it. The confidence of the public is too solid to be shaken by personal incidents. I do sincerely rejoice that Monroe is added to your councils. He will need only to perceive that you are without reserve towards him, to meet it with the cordiality of earlier times. He will feel himself to be again at home in our bosoms, and happy in a separation from those who led him astray. I learn that John Randolph is now open-mouthed against him and

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Hay.[1] The letter which I wrote lately to Wilkinson was one of necessity written to thank him for his book which he sent me.[2] He says nothing in his letter of the anonymous letter in Clarke's book to which you allude. I have never seen Clarke's book, and know nothing of its contents.[3] The only part of my letter which regards Wilkinson himself is in these words: "I look back with commiseration on those still buffeting the storm, and sincerely wish your Argosy may ride out, unhurt, that in which it is engaged. My belief is that it will; and I found that belief on my own knowledge of Burr's transactions, on my view of your conduct in encountering them, and on the candor of your judges." These are truths which I express without reserve whenever any occasion calls for them. Whatever previous communications might have passed between Burr and Wilkinson on the subject of Mexico, I believe that on the part of the latter it was on the hypothesis of the approbation of the government. I never believed Wilkinson would give up a dependance on the govern-

[1] George Hay, United States District-Attorney for Virginia, and son-in-law of James Monroe. He had conducted the prosecution on Aaron Burr.—Eds.

[2] The letter to General Wilkinson here referred to is printed in vol. xiii. p. 23.

[3] The book referred to is an octavo volume of nearly three hundred and fifty pages, entitled, "Proofs of the Corruption of Gen. James Wilkinson, and of his Connexion with Aaron Burr, with a full Refutation of his slanderous Allegations in Relation to the character of the principal Witness against him. By Daniel Clark of the City of New Orleans." It is not mentioned in Allibone's Dictionary of Author's; but there is a copy in the library of the Mass. Hist. Society.—Eds.

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ment under whom he was the first, to become a secondary and dependant on Burr. I enclose you a letter from Père Gabriel. In a Note of unfinished business which I left with you, you will see exactly how far he had a right to expect the government would go in aid of his establishment. I fear the glimmering of hope that England might return to reason has past off with the return of her mad king to power. Present me affectionately to Mrs. Madison, and be assured of my best wishes for your health and happiness, and that your labors for the public may be crowned with their love.

TO CHARLES PINCKNEY.[1]

MONTICELLO, Feb. 2, 1812.

DEAR SIR,—Your favor of Dec. 18 is duly received, and I am happy to learn from it that you are well and still active in the cause of our country. South Carolina remains firm, too, to sound principles. Of her orthodoxy I shall never doubt. You have the peculiar advantage of gathering all your aristocracy into Charleston, where alone it can be embodied, and where alone it can be felt. We are

[1] Charles Pinckney was born in Charleston, S. C., in 1758, and died there, Oct. 29, 1824. He was a member of the Convention which framed the Federal Constitution, was four times Governor of his native State, several times a member of Congress, and minister to Spain from 1801 to 1805. He strongly advocated the War of 1812 with England, and warmly opposed the Missouri Compromise. See Appleton's Cyclopædia of American Biography, vol. v. p. 23; Lanman's Biographical Annals, pp. 336, 608.—EDS.

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to have war, then? I believe so, and that it is necessary. Every hope from time, patience, and the love of peace is exhausted, and war or abject submission are the only alternative left us. I am forced from my hobby, peace, until our revenue is liberated. Then we could make war without either new taxes or loans, and in peace apply the same resources to internal improvement. But they will not give us time to get into this happy state. They will force us, as they have forced France, to become a nation of soldiers, and then the more woe to them, But all this is for future history. Mine is drawing to its close. Age begins to press sensibly on me, and I leave politics to those of more vigor of body and mind. I give up newspapers for Horace and Tacitus, and withdraw my mind from contention of every kind, perfectly secure that our rulers and fellow-citizens are taking all possible care of us. They will have still many years of aid from you, and that they may be years of health, honor, and happiness is my sincere prayer.

TO E. I. DU PONT DE NEMOURS.[1]

MONTICELLO, June 16, 1812.

DEAR SIR,—On the fourth of November last I wrote to you requesting another quarter cask of

[1] Eleuthère Irénée Du Pont, son of Pierre Samuel Du Pont de Nemours, was born in Paris, France, June 24, 1771, and died in Philadelphia, Oct. 31, 1834. After having suffered imprisonment three

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powder to be forwarded to me with a note of the cost that I might remit for that and the preceding one together. Not having heard from you, I repeated my request in a letter of April 30, and at the same time desired Mr. John Barnes of Georgetown to remit you 50 dollars, which he informs me he had done. This was a mere guess at the cost of the two quarter casks, as I did not know it exactly. Being still without information on the subject, I have to request the favor of a line by post. I should not be so importunate but that the season for blowing rock in a canal I am engaged in has now commenced. I would wish to have half a dozen pounds of shooting powder, and the rest for blowing as before.

In the same letter of April 30, I mentioned that I should shear a few fleeces of genuine Merino wool and of the finest character, with about 15 of half blood; that I had understood you were connected with a manufactory of cloth at which they would receive wool to be spun, woven, and dyed for an equivalent either in the wool or cash, and I asked your information particularly on that subject, for which I will still thank you. A late letter from your father informs me of his health; but you doubt-

times during the French Revolution, he came over to the United States with his father's family in 1799; and in 1802 bought a tract of land, with water-power on the Brandywine River, near Wilmington, Delaware. Here he established the powder-works which are still carried on by his descendants. His nephew, Admiral Samuel F. Du Pont, rendered important services during the rebellion. See Appleton's Cyclopædia of American Biography, vol. ii. pp. 264–666.—Eds.

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less heard from him at the same date. Accept the assurance of my great esteem and respect.

TO RICHARD RUSH.[1]

MONTICELLO, August 2, 1812.

Thomas Jefferson presents his compliments to Mr. Rush, and his thanks for the copy of his oration of the fourth of July, which he has been so kind as to send him, and for the friendly wishes he expresses for his health and happiness. To the last nothing contributes more than the contemplation of such specimens as Mr. Rush has sent him of the eloquence of his country devoted to the celebration of the birthday of our independence. Every day's history proves more and more the wisdom and salutary result of that measure, by developments of the degeneracy of the British nation, and of its rapid decline towards some awful catastrophe, from which

[1] Richard Rush was born in Philadelphia, August 29, 1780; graduated at Princeton in 1797, and was admitted to the bar in 1800. In November 1811, he was made Comptroller of the United States Treasury; and from 1814 to 1817 he was United States Attorney-General. In the latter year he was sent as minister to England, where he remained until 1825, when he was appointed Secretary of the Treasury in the administration of President John Quincy Adams. In March, 1847, he was commissioned as minister to France, and took leave in October, 1849. He died in Philadelphia, July 30, 1859. The oration here referred to was delivered in Washington, July 4, 1812. He was the author of numerous other publications, of which several have a permanent value. See Appleton's Cyclopædia of American Biography, vol. v. p. 350; Lanman's Biographical Annals, pp. 367, 596.—EDS.

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their injustice and the favor of Heaven have separated us.

He salutes Mr. Rush with sentiments of high respect and esteem.

TO E. I. DU PONT DE NEMOURS.

MONTICELLO, November 8, 1812.

DEAR SIR,—It is high time I should make my acknowledgments to you for the piece of cloth of your manufacture which you were so kind as to forward to me. But this article as well as the keg of powder forwarded with it have experienced singular delay. Though sent from Wilmington early in July, they were near two months, I believe, reaching Richmond; from which place they were forwarded to me on the 18th of September, and have not yet reached me, owing to the low state of our river usual in autumn. The first good rain will, I expect, enable the boat to come up, but as I am setting out on a journey on which I shall be absent some weeks, I cannot permit myself to await their actual arrival and my return before I tender you my thanks for the cloth you have been so good as to favor me with. I am happy to know that we have established among us a manufacture from which we may expect to see the French processes, in both weaving and dyeing fine cloths, introduced among us. It is one of the articles in which they certainly excel the English. I am in hopes the Merino race

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of sheep is so well established among us as to leave you in no danger of wanting that article. I have been unlucky with them. I began with one ram and three ewes. One of the ewes died of the scab, and the others for two years have brought me only ram lambs, so that I remain still with only two ewes. But I have many half bloods. There is no demand here for the wool, because we have no manufacture of fine cloth in the State. In that of coarse clothing we are going on very prosperously in our families. Scarcely a family fails to clothe itself. I salute you with great esteem and respect.

TO CHARLES W. PEALE.[1]

MONTICELLO, April 17, 1813.

DEAR SIR,—I had long owed you a letter for your favor of Aug. 19, when I received eight days ago that of Mar. 2, 1812. A slip of the pen, I suppose,

[1] Charles Wilson Peale was born in Chestertown, Maryland, April 16, 1741, and died in Philadelphia, Pa., Feb. 22, 1827. He followed at first the trade of a saddler, but while still a young man determined to be a portrait painter. In this profession he obtained a very considerable degree of success, and painted numerous portraits of Washington and the men of the Revolutionary period. He was also the founder and proprietor of the once famous Peale's Museum of Art and Natural History of Philadelphia. He was a man of great ingenuity and even greater versatility, and "took up, in turn, the making of coaches, harnesses, clocks, and watches, besides working as a silversmith, and he was also soldier, politician, naturalist, taxidermist, and dentist." Numerous letters to or from him are among the Jefferson Papers in the possession of the Massachusetts Historical Society. See Appleton's Cyclopædia of American Biography, vol. iv. pp. 689, 690.—EDS.

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for 1813, and the pamphlet accompanying it strengthens the supposition. I thank you for the pamphlet.[1] It is full of good sense and wholesome advice, and I am making all my grandchildren read it, married and unmarried; and the story of farmer Jenkins will, I hope, remain in their minds through life. Both your letters are on the subject of your agricultural operations, and both prove the ardor with which you are pursuing them. But when I observe that you take an active part in the bodily labor of the farm, your zeal and age give me uneasiness for the result.

Your position that a small farm well worked and well manned will produce more than a larger one ill-tended, is undoubtedly true in a certain degree. There are extremes in this as in all other cases. The true medium may really be considered and stated as a mathematical problem: "Given the quantum of labor within our command, and land ad libitum offering its spontaneous contributions: required the proportion in which these two elements should be employed to produce a maximum." It is a difficult problem, varying probably in every country according to the relative value of land and labor. The spontaneous energies of the earth are a gift of nature, but they require the labor of man to direct their operation. And the question is so to husband his labor as to turn the greatest quantity of this

[1] "An Essay to promote Domestic Happiness," published in 1813.—Eds.

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useful action of the earth to his benefit. Ploughing deep, your recipe for killing weeds, is also the recipe for almost everything good in farming. The plough is to the farmer what the wand is to the sorcerer. Its effect is really like sorcery. In the country wherein I live we have discovered a new use for it, equal in value almost to its services before known. Our country is hilly and we have been in the habit of ploughing in straight rows whether up and down hill, in oblique lines, or however they lead; and our soil was all rapidly running into the rivers. We now plough horizontally, following the curvatures of the hills and hollows, on the dead level, however crooked the lines may be. Every furrow thus acts as a reservoir to receive and retain the waters, all of which go to the benefit of the growing plant, instead of running off into the streams. In a farm horizontally and deeply ploughed, scarcely an ounce of soil is now carried off from it. In point of beauty nothing can exceed that of the waving lines and rows winding along the face of the hills and valleys. The horses draw much easier on the dead level, and it is in fact a conversion of hilly grounds into a plain. The improvement of our soil from this cause the last half dozen years strikes every one with wonder. For this improvement we are indebted to my son-in-law, Mr. Randolph, the best farmer, I believe, in the United States, and who has taught us to make more than two blades of corn to grow where only one grew before. If your farm is hilly, let me be-

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seech you to make a trial of this method. To direct the plough horizontally we take a rafter level of this form . A boy of thirteen or fourteen is able to work it round the hill, a still smaller one with a little hough marking the points traced by the feet of the level. The plough follows running through these marks. The leveller having completed one level line through the field, moves with his level 30 or 40 yards up or down the hill, and runs another which is marked in like manner and traced by the plough, and having thus run what may be called guide furrows every 30 or 40 yards through the field, the ploughman runs the furrows of the intervals parallel to these. In proportion, however, as the declevity of the hill varies in different parts of the line, the guide furrows will approach or recede from each other in different parts, and the parallel furrows will at length touch in one part when far asunder in others, leaving unploughed gores between them. These gores we plough separately. They occasion short rows and turnings which are a little inconvenient, but not materially so. I pray you to try this recipe for hilly grounds. You will say with me, "Probatum est," and I shall have the happiness of being of some use to you, and through your example to your neighbors, and of adding something solid to the assurances of my great esteem and respect.

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TO WILLIAM SHORT.

MONTICELLO, August 20, 1814.

DEAR SIR,—Since my short letter by Mr. Rives I have to acknowledge the receipt of your two favors of June 9 and July 30. A few days before the last came to hand I had written to Colonel Monroe, and prayed him to name a day in the autumn (when the fall of the leaves shall have rendered a survey in the woods practicable), and to procure an engagement from Champe Carter to attend and let us have a surveyor and arbitrators on the spot to settle the questioned boundary. I delayed answering your last letter in the hope that he might in the instant of receiving my letter write to me off-hand. Having failed to do this, the time of his answering is too indefinite to postpone further the giving you the present state and prospect of the business which you desire.

The state of the case is this: John Carter, eldest son of the family, sold to Monroe, bounding him "on the South by a run on the Eastern side of Dick's plantation, and running thence to the source of the said run," but no line was actually marked or examined by either party. It is said that John Carter had no right to sell, but that Champe, from family considerations, concluded to acquiesce. I do not know that this fact is true, having it only from neighborhood report. Champe afterwards sold to you, and attended us in surveying and marking the line.

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Ascending the run far above Dick's plantation, it forked, each run being equally large, and extending nearly to the top of the mountain, but the southern branch something the nearest. We knew nothing of the line specified in Monroe's deed, but Mr. Carter, professing to know it and to lead the surveyor, started from the fork and run a straight line between the two branches to the top of the mountain, thus dividing the interval which the two branches rendered doubtful; but not a word of any doubt was then expressed; I presumed he knew what was right and was doing it. Colonel Monroe, sometime after his return from Europe, mentioned to me in conversation that the line as run between you and him by Mr. Carter, was, as he had been informed, questionable, but he could not then explain to me how; nor did I ever learn how till after the sale to Higgenbotham. Indeed from the continued silence on the subject I believed the claim dropped till I received a line from Higginbotham informing me Mr. Hay had notified him of it, and Colonel Monroe soon afterwards called on me, showed his deed, and explained to me for the first time the nature of his claim. We agreed that Mr. Carter should be desired to attend, that we would take two neighbors as arbitrators, go on the land and settle the question on view. The topics of your right are these: I. If Champe Carter's confirmation of John's sale were necessary to supply the defect of title, then the demarcation of the line which he made in person was

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a declaration of the precise extent to which he did confirm. II. The run, which was made the boundary to its source, branching by the way, and each branch being equally entitled to be considered as the run whose source was to decide, neither could claim exclusively to be called Dick's run; the compromise made by Mr. Carter by running the line between them was a fair one, and after an acquiescence of 21 years, and that length of actual and adverse possession in you, ought to be considered as satisfactory to the parties, and especially when no effective step had been taken to maintain a contrary claim till after the land had been long notified as for sale, and a sale actually made; the delay of the settlement has entirely rested with the other party. Price, who knows the two branches, thinks there may be about 25 acres between them, one half of which only is within the actual line.

Next, as to the prospect. On closing this letter I shall write to John Carter, who lives in Amherst, for information as to his right and his idea of the boundary, and if his information is of consequence I shall either get his deposition taken by consent of parties, or require his personal attendance as a witness. I must press upon Colonel Monroe the fixing a day when he can attend, and some one to act for him if he does not attend. Champe Carter, I suppose, will readily agree to be bound if he does not attend. I should have been very confident of finishing this at Monroe's next visit, for he

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is anxious to finish it, but that the call of Congress, the nineteenth of September will render his attendance difficult. If so, I will endeavor to prevail on him to appoint some one here to act for him; for his personal presence cannot be of much importance.

I think the downfall of Bonaparte a great blessing for Europe, which never could have had peace while he was in power. Every national society there also will be restored to their ancient limits, and to the kind of government, good or bad, which they choose. I believe the restoration of the Bourbons is the only point on which France could be rallied, and that their re-establishment is better for that country than civil wars, whether they should be a peaceable nation under a fool or a warring one under a military despot of genius. To us alone this brings misfortune. It rids of all other enemies a tyrannical nation, fully armed, and deeply embittered by the wrongs they have done us. They may greatly distress individuals in their circumstances; but the soil and the men will remain unconquerable by them, and drinking deeper daily a more deadly, unquenchable, and everlasting hatred to them. How much less money would it cost to them and pain to us, to nourish mutual affections and mutual interests and happiness. But the destructive passions seem to have been implanted in man, as one of the obstacles to his too great multiplication. While we are thus gnawed, however, by

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national hatreds we retire with delight into the bosom of our individual friendships; in the full feeling of which I salute you affectionately.

TO HORATIO G. SPAFFORD.[1]

MONTICELLO, December 16, 1814.

DEAR SIR,—By the condition of the roads and repeated abandonments of the mail by the way, your favor of November 25 did not come to hand until it was certain from its contents you had left Washington. I have delayed acknowledging it therefore till you might have reached Albany, and indeed the only object of doing it thus late is to express my regret at not having had the pleasure of receiving you here, which would have been a gratification, for as to public affairs I am entirely withdrawn from every degree of intermeddling with them, and almost of reading or thinking of them. My confidence in those at the helm is so entire as to satisfy me without enquiry that they are going right, and I prefer reading the histories of other times, which furnish amusement without anxiety. Writing, too, is becoming laborious to me

[1] Horatio Gates Spafford, a warm political friend of Jefferson, was the author of a Geography of the United States, a Gazetteer of the State of New York, and a small pamphlet entitled "Some Cursory Observations on the Ordinary Construction of Wheel Carriages," a subject in which Jefferson was much interested. He was born in Tinmouth, Vt., Feb. 18, 1778, and died in Lansingburgh, N. Y., Aug. 7, 1832. See Hough's American Biographical Notes, p. 370.—EDS.

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and irksome, so that I go to the writing table with reluctance. Retaining, however, my esteem and gratitude for those whose good will has been so kindly bestowed upon me, I acknowledge yours particularly, and tender you my best prayers for your health and prosperity.

MEMORANDUM OF JEFFERSON'S TAXABLE PROPERTY.

A list of the taxable property of the subscriber in Albemarle, Mar., 1815.

	Rate.	Am't.
5640 acres of land (including 400 acres on Hardware held jointly with Hudson and others) ...	.85	
90 slaves of or above the age of 12 years.....	.80	72.
12 " of 9 and under 12 years of age.....	.50	6.
73 head of cattle.....	.03	2.19
27 horses, mares, mules, and colts.....	.21	5.67
1 ice house	5.	5.
1 gigg and harness		
1 4-wheeled carriage (landau)		
House		
4 clocks		
1 bureau or secretary, mahogany.....	.50	.50
2 book cases "	.50	1.
4 chests or drawers "	.25	1.
1 side board with doors and drawers, mahogany..		
48 separate parts of dining tables " ..	.25	2.
3 tea and card tables " ..	.25	3.25
6 sophas with gold leaf	.22½	1.33½
16 chairs, mahogany	.06¼	2.25
4 " gold leaf	.03	1.32
31 pair window curtains, foreign.....	.10	1.10
46 portraits in oil.....	.25	4.
11 " crayon	.12½	.12½
14 picture, prints and engravings with frames more than 12 inches	.15	9.60

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	Rate.	Am't.
39 picture under 12 inches with gilt frames	.10	3.90
3 looking-glasses 5 feet long	5.	15.
3 " 4 feet and not 5 feet	3.	9.
1 " 3 feet and not 4 feet	2.	2.
2 " 2 feet and not 3 feet	1.	2.
1 harpsichord		
2 silver watches	.50	1.
2 silver coffee pots	.50	1.
3 plated urns and coffee pots	.10	.30
13 plated candlesticks	.05	.65
4 cut glass decanters	.05	.20
10 silver cups	.10	1.
1 manufacturing mill renting at 1280 D. @ 2½ p. c.		
1 toll grist mill		
1 saw mill		

TO WILLIAM SHORT.

MONTICELLO, May 15, 1815.

DEAR SIR,—Your favor of the third finds me just on my departure for Bedford, and I return to you, therefore, the paper you enclosed me, without delay. To the fact of the want of time I will further add that no person on earth would more willingly than myself do whatever was within my power to reward with the honors they have merited our naval heroes, for the respect which their heroism has procured for our country, and for the humiliations they have inflicted on an insulting, a vindictive, and causeless enemy. But I never had that sort of poetical fancy which qualifies for allegorical devices, mottoes, etc. Painters, poets, men of happy imagination can alone do these things with taste. I must, therefore, refer

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it back to you for some one who will do justice to the subject. The re-revolution of France furnishes an additional element of calculation for the problem of your return to France. Adversity may have taught Bonaparte moderation; but I apprehend that his temper and particular kink of insanity render him incapable of that. What a treat, indeed, would the conversation of Dupont be! He must totally despair for his country, as I do. A military despotism is now, I fear, fixed on it permanently. Among the victims of his return to power, I contemplate but one with pleasure; that is the Pope. The insult which he and the bigot of Spain have offered to the lights of the nineteenth century by the re-establishment of the Inquisition admits no forgiveness. How happily distant are we from the Bedlam of Europe. Affectionately adieu.

TO CHARLES W. PEALE.

MONTICELLO, June 13, 1815.

DEAR SIR,—In your favor of May 2 you ask my advice on the best mode of selling your Museum, on which, however, I really am not qualified to advise. This depends entirely on the genius and habits of those among whom you live, with which you are so much better acquainted. I wish first it may be disposed of the most to your advantage, and secondly that it may not be separated. If profit be regarded, the purchaser must keep it in

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Philadelphia, where alone the number and taste of the inhabitants can ensure its maintenance. It will be yet some time (perhaps a month) before my workmen will be free to make the plough I shall send you. You will be at perfect liberty to use the form of the mouldboard, as all the world is, having never thought of monopolizing by patent any useful idea which happens to offer itself to me; and the permission to do this is doing a great deal more harm than good. There is a late instance in this State of a rascal going through every part of it, and swindling the mill-owners, under a patent of two years old only, out of 20,000 dollars for the use of winged-gudgeons which they have had in their mills for twenty years, every one preferring to pay ten dollars unjustly rather than be dragged into a Federal court, one, two, or three hundred miles distant.

I think the cornsheller you describe, with two cylinders, is exactly the one made in a neighboring county, where they are sold at twenty dollars. I propose to take some opportunity of seeing how it performs. The reason of the derangement of machines with wooden cylinders of any length is the springing of the timber, to which white oak has a peculiar disposition. For that reason we prefer pine as the least apt to spring. You once told me of what wood you made the bars of the pen-frame in the polygraph, as springing less than any other wood; and I have often wished to recollect it, but cannot. We give up here the cleaning of clover

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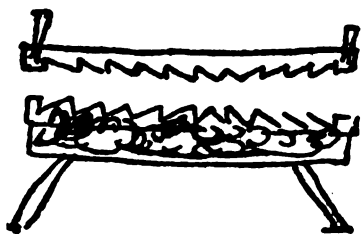
seed, because it comes up so much more certainly when sown in the husk; seven bushels of which is more easily obtained for the acre than the three pints of clean seed which the sowing-box requires. We use the machine you describe for crushing corn-cobs, and for which Oliver Evans has obtained a patent, although to my knowledge the same machine has been made by a smith in Georgetown these sixteen years for crushing plaster, and he made one for me twelve years ago, long before Evans's patent. The only difference is that he fixes his horizontally, and Evans vertically. Yet I chose to pay Evans's patent price for one rather than be involved in a lawsuit of two or three hundred dollars' cost. We are now afraid to use our ploughs, every part of which has been patented, although used ever since the fabulous days of Ceres. On the subject of the spinning jenny, which I so much prefer to the Arkwright machines, for simplicity, ease of repair, cheapness of material and work, your neighbor, Dr. Allison, of Burlington, has made a beautiful improvement by a very simple addition for the preparatory operation of roving. These are much the best machines for family and country use. For fulling in our families we use the simplest thing in the world. We make a bench of the widest



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plank we can get, say half a yard wide at least, of thick and heavy stuff. We cut notches crosswise of that 2 inches long and 1 inch deep; the perpendicular side of the notch fronting the middle one from both ends; on that we lay a 4 inch board, 6 feet long, with a pin for a handle in each end, and notched as the under one. A board is nailed on each side of the under one, to keep the upper in place as it is shoved backwards and forwards, and the cloth, properly moistened, is laid between them Two hands full 20 yards in two hours.

Our threshing machines are universally in England fixed with Dutch fans for winnowing, but not with us, because we thresh immediately after harvest, to prevent weavil, and were our grain then laid up in bulk without the chaff in it, it would heat and rot. Ever and affectionately yours.

TO THOMAS W. MAURY.

MONTICELLO, January 27, 1816.

DEAR SIR,—I am favored with yours of the 17th. Mr. Cabell had apprised me of the objections to the power of imprisonment given to a functionary of our college, and having explained to him the reason for it I must refer you to him for a sight of my letter.[1] The object seems to have been totally mistaken,

[1] This is the letter written by Jefferson to Joseph C. Cabell, Jan. 24, 1816. See vol. xiv. p. 412.—EDS.

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and what was intended in tenderness to the pupil has been misconstrued into an act of severity; for every one knows they may now be sent by a common magistrate to the common prison for a breach of the peace. With respect to the bank-mania, I foresaw it in 1791, and then opposed the establishment of the Bank of the United States, which I knew was only an inoculation. I have marked the progress of the disease and seen that it was incurable and to end in death. There will be a vast crush of private fortunes, as on the death of the old Continental paper, as of the Assignats of France, the Mississippi paper of Law, the South Sea paper of England, etc. The most pitiable of its victims now as before will be the helpless widow and orphan. Prudent men will mitigate its effects by caution. They will protect themselves as they do their fences when the woods are afire, by firing against it. What is most blamable is the cruelty of your process, roasting us before a slow fire like the martyrs in the days of persecution. Instead of your fifteen banks be merciful, and give us the *coup de grace*, make it a thousand. However, I am perfectly content with the fifteen, and to meet all hazards and trials with my fellow-citizens. If we keep together we shall be safe, and when error is so apparent as to become visible to the majority, they will correct it, and what we suffer during the error must be carried to account with the losses by tempests, earthquakes, etc. Yours with great friendship.

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TO STEPHEN CATHALAN.[1]

MONTICELLO, February 1, 1816.

MY DEAR SIR AND FRIEND,—I received yesterday your favor of Nov. 29, from which I learn with much mortification of (the palate at least) that my letter of the third of July has never got to your hands. It was confided to the Secretary of State's office. Regrets are now useless, and the proper object to supply its place. It related generally to things friendly, to things political, etc., but the material part was a request of some particular wines which were therein specified.

1. White Hermitage of the growth of M. Jourdan; not of the dry kind, but what we call silky, which in your letter just received you say are called doux. But by our term *silky* we do not mean *sweet*, but sweetish in the smallest degree only. My taste in this is the reverse of Mr. Butler's, who you say likes the dry and sparkling, I the *non mousseux* and *un peu doucereux*.

2. Vin de Nice, as nearly as possible of the quality of that sent me by Mr. Sasserno formerly, whose death, by the bye, I had not before heard of, and much regret.

3. Vin de Roussillon. I used to meet with this at the best tables of Paris, where it was drunk after the repast, as a *vin de liqueur*. It was a little higher

[1] Stephen Cathalan was for a very long time consul of the United States at Marseilles, and a business correspondent of Jefferson.—EDS.

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colored than Madeira, near as strong and dry, and of fine flavor. I am not certain of the particular name, but that of Rivesalte runs in my head. If, from what you know of the Rivesalte it should answer this description nearly, then we may be sure this was the wine; if it does not, you will probably be able to know what wine of Roussillon corresponds with the qualities I describe.

I requested that after paying for 50 lbs. of macaroni out of the 200 dollars, and reserving what would pay all charges till shipped, about a fifth of the residue should be laid out in Hermitage, and the remaining four-fifths in Vins de Nice [and?] Roussillon equally. Send to any port from Boston to the Chesapeake inclusive, but to Norfolk or Richmond of preference, if a conveyance occurs. If addressed to the Collector of the Port, he will receive and forward them to Richmond, which is at the head of the tidewater of James River on which I live, and from whence it comes by boat navigation. I suppose you can never be long without vessels at Marseilles bound to some of our ports above described. Were it to be otherwise the wines might come through the canal of Languedoc to Mr. Lee, our consul at Bordeaux, but this would increase risk and expense, and is only mentioned as a *pis-aller*, and left entirely to your judgment.

The political speculations of my letter of July 3 are not worth repeating because the events on which they were hazarded have changed backwards and

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forwards, two or three times since that. My wishes are for the happiness of France, without caring what executive magistrate makes her happy. I must confess, however, I did not wish it to be Bonaparte. I considered him as the very worst of all human beings, and as having inflicted more misery on mankind than any other who had ever lived. I was very unwilling that the example of his parricide usurpation should finally stand approved by success. He is now off the scene, I hope never to return on it; but whether you are much more at your ease in the hands of the allies, you know better than I do. On the subject of your continuance in the consulate, I hope you will never have anything to fear; never, certainly whilst any effort of mine can have any weight with the government; and in a late letter to the Secretary of State, wherein I had occasion to speak of you, I have placed your merits on ground which I think will never be assailed. God bless you and preserve you many years in health and prosperity.

TO MARY B. BRIGGS.

MONTICELLO, April 17, 1816.

I thank you, my excellent young friend, for your kind letter of March 7. The heart must be of uncommon sensibility which feels so strongly slight degrees of merit in others. If I have ever been useful to your father, it was by doing what was much

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more useful to the public for whom I acted, by availing them of the services of a faithful and able citizen. It is not, then, to me you are indebted, but to his worth and science which marked him for notice. Mine was but an act of duty, which, like the payment of a debt, has no merit to claim; and I feel myself fully remunerated by its having been the means of introducing to me the knowledge of an amiable daughter, inheriting the kind heart of her father, copying, in the age of the passions, the virtues of a model tested by time and experience. Go on then my worthy friend, in this career of excellence, and be strong in the assurance given by an inspired pen, "I have been young, and now I am old, and yet never saw I the righteous forsaken, or his seed begging their bread." And if the prayers of an old man can be of any avail, you shall ever have mine most ardently. Accept my friendly salutations.

TO JOSEPH STORY.[1]

MONTICELLO, June 19, 1816.

I thank you, dear Sir, for the eulogy of Mr. Dexter, which you have been so kind as to send me, and I subscribe with sincerity to the testimonies it bears

[1] Joseph Story, one of the most eminent jurists this country has produced, was born in Marblehead, Mass., Sept. 18, 1779, and died in Cambridge Sept. 10, 1845. In November, 1811, when little more than thirty-two, he was made an Associate Justice of the Supreme Court of the United States. See Story's Life and Letters of Joseph Story.—EDS.

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of his merits. No one rendered more justice to his virtues and talents than myself; and if, in political matters, we entertained some differences of opinion, they were on both sides the result of honest conviction, and held by both as inoffensive as differences of feature. His loss was a real affliction to the friends of our Union, and especially at a crisis when a successor was in question to the important magistracy for which he was proposed. I am fond, however, of believing that the majority with you will still return to the sacred principle of fidelity to the Union, and will see in the duties which he would have inculcated their own most important interests. Accept the assurance of my great esteem and respect.

TO WILLIAM THORNTON.

MONTICELLO, July 27, 1816.

DEAR SIR,—Your favor of the twentieth is received, and I take up my pen merely to assure you I had not mentioned the return of the paintings from any hurry to receive them, but merely to make known a safe occasion of sending them, if done with. I thank you for the offer to place a copy of one of them here in oil, but Stuart's original takes as much room on the walls as the thing is worth. With respect to the merit of Otis's painting,[1] I am not qual-

[1] Bass Otis painted a portrait of Jefferson, which was engraved for Joseph Delaplaine's Portrait Gallery. It has been reproduced as a photogravure for the present work. See Frontispiece of vol. v.

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ified to say anything, for this is a case where the precept of "know thyself" does not apply. The ladies from the studies of their looking-glasses may be good judges of their own faces; but we see ours only under a mask of soap suds and the scrapings of the razor.

Accept always the assurance of my great esteem and respect.

TO CHARLES PINCKNEY.

MONTICELLO, September 3, 1816.

DEAR SIR,—Your favor of August has been duly received, with the pamphlet it covered.[1] Colonel Monroe happened to be at his seat adjoining me, and to dine with me the day I received it. I thought I could not make better use of it than by putting it into his hands, to let him know his friends. You say nothing in your letter of your health, which, after so long an interval, cannot but be interesting to a friend. I hope it continues firm. As for myself, I weaken very sensibly, yet with such a continuance of good health as makes me fear I shall wear out very tediously, which is not what one would wish. I see

[1] The reference is to a pamphlet of fifty-two octavo pages published by Charles Pinckney in 1816, under the title of "Observations to shew the Propriety of the Nomination of Colonel James Monroe, to the Presidency of the United States by the Caucus at Washington. In which a full answer is given to the pamphlet entitled 'Exposition of the motives for opposing the nomination of Mr. Monroe as President of the United States.' By a South Carolinian." It is a vigorous defence of the public life of Mr. Monroe, and strongly advocated his nomination.—EDS.

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no comfort in outliving one's friends, and remaining a mere monument of the times which are past. I withdraw myself as much as possible from politics, and gladly shelter myself under the wings of the generation for which, in our day, we have labored faithfully to provide shelter. Yours with continued friendship and respect.

TO NOAH WORCESTER.[1]

Nov. 26, 1817.

SIR,—You have not been mistaken in supposing my views and feeling to be in favor of the abolition of war. Of my dispostion to maintain peace until its condition shall be made less tolerable than that of war itself, the world has had proofs, and more, perhaps, than it has approved. I hope it is practicable, by improving the mind and morals of society, to lessen the dispostion to war; but of its abolition I despair. Still, on the axiom that a less degree of evil is preferable to a greater, no means should be neglected which

[1] Rev. Dr. Noah Worcester, now best known for his advocacy of peace between nations, and as the first Secretary of the Massachusetts Peace Society, was born in Hollis, N. H., Nov. 25, 1758, and died in Brighton, Mass., Oct. 31, 1837. During the Revolution he served for a time in the army as a fifer, and was present at the battles of Bunker Hill and Bennington. Subsequently he taught school, and afterward entered the ministry, and for fifteen years he was minister of a church in Thornton, N. H. He had been brought up as a Trinitarian, but previous to his removal to Brighton, in 1813, he became an avowed Unitarian. He was a voluminous writer on religious and philanthropic themes. See Ware's Memoirs of the Rev. Noah Worcester, D. D.—EDS.

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may add weight to the better scale. The enrolment you propose, therefore, of my name in the records of your society cannot be unacceptable to me. It will be a true testimony of my principles and persuasion that the state of peace is that which most improves the manners and morals, the prosperity and happiness of mankind; and although I dare not promise myself that it can be perpetually maintained, yet if, by the inculcations of reason or religion, the perversities of our nature can be so far corrected as sometimes to prevent the necessity, either supposed or real, of an appeal to the blinder scourges of war, murder, and devastation, the benevolent endeavors of the friends of peace will not be entirely without remuneration. I pray you to accept the assurance of my respect and consideration.

TO BERNARD PEYTON.[1]

MONTICELLO, Mar. 20, 1818.

DEAR SIR,—I received yesterday your favor of the 16th, and am thankful for your attention to my wants. I saw William Johnson the evening before his boat started last. He told me that he should not go down himself, but that his brother would, and he

[1] Bernard Peyton was a commission merchant in Richmond, and during the latter part of Jefferson's life transacted most, if not all, of his business in that city. It is interesting to note the fact that in consequence of the difficulty of buying raw cotton, in 1818, Jefferson proposed "to recur to the cultivating it" himself. The principal products of his plantations were wheat and tobacco.—EDS.

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would be answerable for every thing trusted to him as if to himself. I was on horse back and at the river side, so could not give him a written order, but shall hereafter be willing to trust *his boat*, whether he is with it himself or not, and consequently would wish the rest of my wines to be delivered to the conductor of his boat whenever called for. The impossibility of buying raw cotton obliges [me] to recur to the cultivating it myself. So much has it [got] out of practice that even the seed is lost in this part of the country. Could you possibly buy me a sack or barrel of about five bushels? It will be a great accommodation to me. Affectionately yours.

TO JOHN NELSON.[1]

MONTICELLO, Nov. 8, 1818.

DEAR SIR,—I enclose you four letters lately received, which I suppose to be from your friends in Ireland, and which I hope may give you agreeable news from them.

I return you also the papers which Mr. Dinsmore gave me from you, and I see, not without sensible regret, that our ideas of the mode of charging interest are very different. I never in my life paid a cent of compound interest, being principled against it; not but that compound may be made as just as simple

[1] This letter is printed from Jefferson's polygraph copy. It is addressed at the foot of the page to "Mr. Neilson," but is indorsed in Jefferson's hand "Iohn Nelson."—EDS.

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interest, but then it should be at a lower rate. Interest, simple or compound, is a compensation for the use of money, and the legislature supposed, as is the truth and general opinion, that taking one mode of employing money with another, 6 per cent simple interest is an average profit; but had they established a compensation by way of compound interest, they would have probably fixed it at 4 or 4½ per cent. The difference it makes in our case is but a little over forty dollars, a sum which with you I think nothing of, could I allow myself to countenance what I think is wrong, without pretending to censure those who think differently; as it is, your debt, in the form in which I always considered it, shall be paid out of the proceeds of my crop now going to market as soon as sold, which possibly may be not till April. Your debt has remained in my hands because not called for, and in the belief you had no expectation of placing it at better profit. Had I ever supposed you wished to employ it otherwise, it should never have been kept from you a moment. In no case, however, will this difference of opinion lessen my wishes to be useful to you, nor my friendly esteem for you.

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TO WILLIAM TUDOR.[1]

MONTICELLO, Jan. 31, 1819.

SIR,—Your favor of the 13th was received on the 24th, and I extremely regret that it is not in my power to give you any information on the subject of Mr. James Otis. My acquaintance with the Eastern characters began with the first Congress; Mr. Otis not being a member, I had never any personal acquaintance or correspondence with him. Colonel Richard Henry Lee, of Westmoreland County, had, I know, an active correspondence from the early dawn of our Revolution with gentlemen of that quarter, and with none more probably than Mr. Otis, who was then so conspicuous in the principles of the day. It is probable he preserved Mr. Otis's letters, and that his family now possesses them. Of them I have no knowledge, as their residence is in a part of the State very remote from mine. But a certain and easy channel for your communication with them would be through any member of Congress from your State and the member from the Westmoreland district of ours. Who he is, I cannot tell you, so entirely am I withdrawn from all attention to public affairs, and so thoroughly satisfied to leave them to the generation

[1] William Tudor, Jr., was born in Boston, Jan. 28, 1779, graduated at Harvard College in 1796, and died at Rio de Janeiro, March 9, 1830. He was the founder and first editor of the "North American Review," and author of a "Life of James Otis," which has deservedly enjoyed a high reputation, besides several minor publications. See Proceedings (Massachusetts Historical Society), vol. i. pp. 429–433.—EDS.

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in place, in whose hands, from the advancing state of knowledge, they will be at least as wisely conducted as they have been by their predecessors. With this scanty information, all, however, which I possess, I pray you to accept the assurance of my high respect and esteem.

TO WILLIAM SHORT.

MONTICELLO, June 22, 1819.[1]

DEAR SIR,—Your favor of June 22 is received. That of May 25 had come to hand in due time, and was in my bundle of "Letters to be answered;" but as I am obliged to marshal them according to their degree of pressure I had not yet reached it, although I devote to that business daily from sunrise to dinner, saving one hour to ride, and generally from dinner to sunset. On the subject of the anatomist and mathematician who wish a place in our University, nothing can be said at present, because it has been concluded by the Visitors to employ all our funds of the present and next year in providing buildings for the habitation of the professors and students, and consequently not to open the University *generally* until the year 1821. I say *generally*, because particular and previous transactions had led to the proposing to Dr. Cooper the commencing his branches in April next. The conflagration in which you are kind enough to take an interest was only of a detached

[1] Mistake in date; should be June 29.

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pavilion, which is now again under repair. Mr. Poletika has been on a visit to us and left us yesterday. I had previously by letter given him the necessary explanations on Kosciusko's affairs here, which were quite satisfactory to him. I am endeavoring to transfer the whole business to a Federal court, having refused the executorship. We have had a circuitous rumor that you meant to visit your native State this summer. In that event we should certainly hope to share in the visit. As Mr. Correa promises an annual pilgrimage to this place, I am informing him of my movements the ensuing season, that I may not lose the benefit of his visit, as once befell me. I set out to Poplar Forest this day week, to remain there through July, August and September. I must be back of necessity by the 1st of October to the meeting of our Visitors, at which further arrangements will be decided on respecting our University; and as yourself as well as Mr. Correa are kind enough to take an interest in its success, it may be some inducement towards the timing your visit. I will be responsible that for health you will be as safe here as at the watering places, although we cannot offer as varied a society; yet I trust the day is not so distant but that I shall live to see it, when we can be able to offer a more desirable society to men of mind than any other place in America. We have a *carte blanche* for their employment, and we mean to accept for our institution no person of secondary grade in his science, if there be one of the first on

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either side of the Atlantic who can be tempted to come to us. We are providing for them as handsome and comfortable lodgings as they can have in Europe, and their satisfaction here will be liberally cultivated. There is a cloud, however, visible in our horizon. The infatuated confidence in banks has made much of our capital of a million and a half of dollars to depend on their fate. My remonstrances for years back against these unsafe deposits have been received as the forebodings of Cassandra. When now upbraided with this the answer is, Who would have thought it? Till the present state of things, however, be unravelled, we must slacken our pace. I salute you as ever with constant and affectionate friendship and respect.

TO GEORGE A. OTIS.[1]

MONTICELLO, December 25, 1820.

SIR,—I have to thank you for the second volume of your translation of Botta, which I received with your favor of the fifth, on my return home after a long absence. I join Mr. Adams heartily in good wishes for the success of your labors, and hope they will bring you both profit and fame. You have

[1] George Alexander Otis was the son of Dr. Ephraim Otis, of Scituate, and was born August 29, 1781. He settled in Boston and was the author of numerous translations, of which the best known is his translation of Botta's History of the War of American Independence. See N. E. Hist. and Gen. Register, vol. iv. p. 151.—EDS.

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certainly rendered a good service to your country; and when the superiority of the work over every other on the same subject shall be more known, I think it will be the common manual of our revolutionary history. I have not been sensible of the Southern partiality imputed by Mr. Adams to the author. The Southern States as well as Northern did zealously whatever the situation or circumstances of each, or of their sister States, required or permitted, and a relation of what they did is only justice. I disapprove, with Mr. Adams, of the factitious speeches which Botta has composed for R. H. Lee and John Dickinson, speeches which he and I know were never made by these gentlemen. They took a part indeed in that great debate, and I believe we may admit Mr. Dickinson to have been the prominent debater against the measure. But many acted abler parts than R. H. Lee, as particularly Mr. Adams himself did. Mr. Lee was considered as an orator and eloquent, but not in that style which had much weight in such an assembly of men as that Congress was. Frothy, flimsy, verbose, with a musical voice and chaste language, he was a good pioneer, but not an efficient reasoner. This, Mr. Adams can tell you as well as myself. With regard to Botta, I have understood that he has taken some occasion to apologize for these supposititious speeches by pleading the example of the ancient historians; and we all know that their practice was to state the reasons for and against a meas-

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ure in the form of speeches, and put them into the mouths of some eminent character of their selection, who probably had never uttered a word of them. I think the modern practice better of saying it was argued on one side by A, B, C, and others, so and so, and on the other by D, E, F, and others, so and so; giving in this form the reasons for and against the measure. I do not recollect whether Botta has repeated the fault on other occasions. With respect to the speeches in the British Parliament I have taken for granted that he copied or abridged them from the Parliamentary Debates. Mr. Adams's criticism on Davila and Hume is just; that the former is an apology for Catharine of Medicis, and the latter of the Stuarts, to which might be added Robertson's Mary, Queen of Scots. And these odious partialities are much to be lamented; for otherwise they are three of the finest models of historical composition that have been produced since the days of Livy and Tacitus.

Wishing you a full remuneration, either by the profits of your work or by the evidence it may have furnished the government of the degree in which they may avail the public of your services, I salute you with sentiments of esteem and respect.

P. S. I have just dispatched your two volumes to Mr. Botta, to whom I am sure they will be a gratification.

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TO MARIA COSWAY.[1]

MONTICELLO, December 27, 1820.

"Over the length of silence I draw a curtain," is an expression, my dear friend, of your cherished letter of April 7, 1819, of which it might seem I have need to avail myself; but not so really. To seventy-seven heavy years add two of prostrate health, during which all correspondence has been suspended of necessity, and you have the true cause of not having heard from me. My wrist, too, dislocated in Paris while I had the pleasure of being there with you, is, by the effect of years, now so stiffened that writing is become a most slow and painful operation, and scarcely ever undertaken but under the goad of imperious business. But I have never lost sight of your letter, and give it now the first place among those of my transatlantic friends which have been laying unacknowledged during the same period of ill-health.

[1] Maria Hadfield was the daughter of an Irishman or Englishman living in Italy, and was born in Florence, but the date of her birth is uncertain; and the date of her death is also unknown. After the death of her father she was brought to England by her mother, and took up miniature painting. In 1781 she exhibited three pictures at the Royal Academy, and in the same year was married to Richard Cosway, then a very fashionable and highly successful artist. She herself obtained great popularity as a painter and etcher, and is mentioned several times in the letters of Horace Walpole. Much of her life is involved in obscurity, but a large part of it was spent on the Continent. There are numerous letters to and from her among the Jefferson Papers, extracts from which are printed in Miss Randolph's Domestic Life of Thomas Jefferson. See Dictionary of National Biography, vol. xii. pp. 278–280.—EDS.

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I rejoice in the first place that you are well; for your silence on that subject encourages me to presume it. And next, that you have been so usefully and pleasingly occupied in preparing the minds of others to enjoy the blessings you have yourself derived from the same source, a cultivated mind. Of Mr. Cosway I fear to say anything, such is the disheartening account of the state of his health given in your letter. But here or wherever, I am sure he has all the happiness which an honest life ensures. Nor will I say anything of the troubles of those among whom you live. I see they are great, and wish them happily out of them, and especially that you may be safe and happy, whatever be their issue. I will talk about Monticello, then, and my own country, as is the wish expressed in your letter. My daughter [1] Randolph, whom you knew in Paris a young girl, is now the mother of eleven living children, the grandmother of about half a dozen others, enjoys health and good spirits, and sees the worth of her husband attested by his being at present Governor of the State in which we live. Among these, I live like a patriarch of old. Our friend Trumbull is well, and profitably and honorably employed by his country in commemorating with his pencil some of its revolutionary honors. Of Mrs. Cruger I hear nothing, nor for a long time of Madame de Corny. Such is the present state of our former coterie: dead, diseased, and dispersed.

[1] Martha Jefferson (Mrs. Thomas Mann Randolph).

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But "tout ce qui est differé n'est pas perdu." says the French proverb, and the religion you so sincerely profess tells us we shall meet again; and we have all so lived as to be assured it will be in happiness. Mine is the next turn, and I shall meet it with good will, for after one's friends are all gone before them, and our faculties leaving us, too, one by one, why wish to linger in mere vegetation,—as a solitary trunk in a desolate field, from which all its former companions have disappeared? You have many good years remaining yet to be happy yourself and to make those around you happy. May these, my dear friend, be as many as yourself may wish, and all of them filled with health and happiness, will be among the last and warmest wishes of an unchangeable friend.

TO WILLIAM THORNTON.[1]

MONTICELLO, January 19, 1821.

DEAR SIR,—Your letter of the ninth was nineteen days in its passage to me, being received yesterday evening only; and now that I have received it, I wish that I could answer it more to your satisfaction. I must explain to you my situation. When I retired from office at Washington, my intimacy with my successor being well known, I became the

[1] William Thornton was head of the Patent Office 1802–1827. He was a skilled architect, and planned the first Capitol at Washington, and superintended the early part of its construction

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center of application from all quarters, by those who wished appointments, to use my interposition in their favor. I gave into it for a while, until I found that I must forever keep myself prostrate, and in the posture of a suppliant before the government, or renounce altogether the office of an intercessor. I determined on the latter; and the number of applicants obliged me to have a formal letter printed in blank, to which I had only to put the date, signature, and address. I inclose you one of these in proof of the necessity I was under of laying down such a law to myself, and of a rigorous adherence to it. I comfort myself, however, in your case with the unimportance of any interposition. You are so well known to the President and heads of departments that they need nobody's information as to your qualifications and means of service. Where they know facts themselves they will act on their own judgments, and in your case particularly with every disposition in your favor; and whatever they shall do for you will give no one greater pleasure than myself.

I am much indebted to you for the pamphlet of patents. It is a document which I have often occasion to consult. With my respectful souvenirs to the ladies of your family, I pray you to accept the assurance of my continued esteem and attachment.

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TO JOHN TAYLOR.[1]

MONTICELLO, February 14, 1821.

DEAR SIR,— . . . I received some time ago from Mr. Ritchie, in your name and his, a copy of your late work on the Constitution of the United States. I returned him my thanks, and begged they might be communicated to yourself through the same channel.[2] But I am glad to avail myself of this opportunity of doing it directly, and with the more pleasure after having read the book, and acquired a knowledge of its value. I have no hesitation in saying that it carries us back to the genuine principles of the Constitution more demonstratively than any work published since the date of that instrument. It pulverizes the sophistries of the judges on bank taxation, and of the five lawyers on lotteries. This last act of venality(for it cannot be of judgment) makes me ashamed that I was ever a lawyer. I have suggested to a friend in the legislature that that body should send a copy of your book to every one of our Representatives and Senators in Congress as a standing instruction, and, with a declaration that it contains the catholic faith, which whosoever doth not keep whole and unde-

[1] The original of this letter is in the collection of autographs given to the Massachusetts Historical Society by Mr. and Mrs. A. C. Washburn. The first part of the letter relates to the pecuniary circumstances in which the family of Wilson C. Nicholas were left at his death and has therefore been omitted.—EDS.

[2] The letter to Thomas Ritchie here referred to was written by Jefferson on Dec. 25, 1820. See vol. XV. p. 295.

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filed, without doubt he shall perish everlastingly. Our University labors hard to come into existence. I am surprised it finds enemies in the colleges, academies, and private classical schools throughout the State, as if inimical to them. But it becomes in truth their foundation, not their rival. It leaves to them the field of classical preparation, not proposing to turn itself into a grammar school. It leaves to them that middle degree of instruction in geography, surveying, grammar, etc., which will be called for by the great body of those who cannot afford or who do not wish an University education. We shall receive only those subjects who desire the highest degree of instruction, for which they now go to Harvard, Princeton, New York, and Philadelphia. These seminaries are no longer proper for Southern or Western students. The signs of the times admonish us to call them home. If knowledge is power, we should look to its advancement at home, where no resource of power will be unwanting. This may not be in my day; but probably will in yours. God send to our country a happy deliverance, and to yourself health, and as long a life as yourself shall wish.

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TO ———.[1]

MONTICELLO, November 24, 1821.

DEAR SIR,—Your welcome favor of the 12th came to hand two days ago. I was just returned from Poplar Forest, which I have visited four times this year. I have an excellent house there, inferior only to Monticello, am comfortably fixed and attended, have a few good neighbors, and pass my time there in a tranquillity and retirement much adapted to my age and indolence. You so kindly ask an explanation of the illness which held me so long that I feel it a duty to give it. Having been long subject to local and slight affections of rheumatism, and being at Staunton on other business, I thought I would go to the Warm Springs and eradicate the *seeds* of it, for I was then in perfect health. I used the bath moderately for three weeks. I was not quick enough, however, in observing the gradual debility it was bringing on me. At length it produced a general eruption and imposthume. After a painful journey I got home unable to walk without help,

[1] This letter is printed from the polygraph copy in Jefferson's own hand, which bears no indication of the person to whom it was addressed. But there can be no doubt that it was written in answer to a letter from William Short, dated Philadelphia, Nov. 12, 1821, now in the Department of State at Washington, and calendared as follows, "Wishes to have direct intelligence as to his health and about the university, in which he takes great interest. His dislike of Mr. Madison. Governor Mercer's bad health. Le Roy de Chaumont's estate. Tour on the great canal from Utica to Rome (N. Y.)." See Bulletin of the Bureau of Rolls and Library of the Department of State. No. 8, p. 499.—EDS.

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and the debility and indisposition rapidly increased and reduced me to death's door. Swelled legs began to threaten dropsy, aided by a prostration of the visceral powers. Abandoning medicine, however, and fortifying my legs by bandages continued eight or ten months, I am at length entirely recovered, and suppose myself as well as I ever shall be. I am very little able to walk, but ride freely without fatigue. No better proof than that on a late visit to the Natural Bridge I was six days successively on horseback from breakfast to sunset. You enquire also about our University. All its buildings except the Library will be finished by the ensuing spring. It will be a splendid establishment, would be thought so in Europe, and for the chastity of its architecture and classical taste leaves everything in America far behind it. But the Library, not yet begun, is essentially wanting to give it unity and consolidation as a single object. It will have cost in the whole but 250,000 dollars. The library is to be on the principle of the Pantheon, a sphere within a cylinder of 70 feet diameter,—to wit, one-half only of the dimensions of the Pantheon, and of a single order only. When this is done you must come and see it. I do not admire your Canada speculation. I think, with Mr. Rittenhouse, that it is altogether unaccountable how any man can stay in a cold country who can find room in a warm one, and should certainly prefer, to polar regions of ice and snow, lands as fertile and cheap which may be cov-

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ered with groves of olives and oranges. I envy M. Chaumont nothing but his French cook and cuisine. These are luxuries which can neither be forgotten nor possessed in our country. Our State has been visited by a sporadic fever of a most extraordinary character, if a thing so diversified can be said to have any character. In some places rapid and mortal, in others tedious and of little danger. It has prevailed, too, almost solely in the mountainous regions —Harper's Ferry, Loudon, Orange, Buckingham, Bedford, Botetourt. At the Big Lick in the last county it was stopped only by the complete extermination of every human being living at the place, forty-two in number. It is at length disappearing in most places. Our Visitors meet the ensuing week, and you will see in the public papers their annual report to the legislature on the state of the University, which will give you more particular views of it than I have done. We hear not a word of Correa, and it is long since I have heard of Charles Thomson. You would gratify me greatly by a minute account of his condition, which you can readily obtain where you are. You say nothing of your own health, whence I presume it good, and that it may continue so through as long a life as yourself shall wish is the prayer of your ever affectionate friend.

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TO WILLIAM TUDOR.[1]

MONTICELLO, Feb. 14, 1823.

SIR,—I have duly received your favor of Jan. 24, and with that a copy of your life of James Otis, for which be pleased to accept my thanks. The character of Mr. Otis, the subject of this work, is one which I have always been taught to hold in high estimation, and I have no doubt that the volume will on perusal be found worthy of its subject. With respect to the part of it respecting Dr. Franklin, on which you ask my opinion particularly, I have perused it with attention, and as far as my personal acquaintance authorizes me to say, I think it generally just and correct. Of one point, however, I was not aware, to wit, that the Doctor came more tardily into the idea of resistance by arms than others generally. When he returned from England and took his first seat in Congress, which was before our second petition to the king, he was as forward as any of us; and he first laid on our table a form of confederation. However, it is very possible that while he continued in England, surrounded by the appalling means of that powerful nation, and compared them with ours, he might have doubts whether the array in arms might not be better

[1] The Massachusetts Historical Society owns the original draught of this letter (in the collection of Jefferson Papers given by Mr. Coolidge in June, 1898), and also the letter actually sent (in the collection of Tudor Papers given by Mrs. Fenno Tudor in April, 1881). In the draught a few words were abbreviated, and two or three slight verbal changes were made when the letter was written out. The letter is here printed from the perfected copy.—EDS.

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postponed awhile. On this subject, however, I have no particular information. With my thanks for the copy of your work, be pleased to accept the assurance of my great esteem and respect.

TO THOMAS COX.[1]

MONTICELLO, June 3, 1823.

SIR,—I have duly received your favor of May 2, and since that the twenty bottles of Scuppernon wine you have been so kind as to forward. I am gratified, too, to learn that the two casks of that wine furnished me heretofore through the friendly agency of Colonel Burton were from you. They were really fine. I had urgently pressed on him that there should be no cookery on them of brandy, sugar, or other medicament, and as far as my palate can discriminate they are pure. All the samples of this wine which I have seen except these two and one other, have been so adulterated with brandy and sugar as to be mere juleps, and not wine; and candor obliges me to say that the twenty bottles now received are so charged with brandy, perhaps too with sugar, as that the vinous flavor is lost and absorbed. There will never be a drinkable wine made in this country until this barbarous practice is discontinued of adulterating with brandy. It is the result of a taste vitiated by the use of ardent spirits. I shall be gratified indeed

[1] This letter is printed from the original draught, which is indorsed in Jefferson's hand "Cox, Thos. Plymouth, N. C., June 3, 23."—EDS.

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if permitted to apply to you for my supplies from time to time of this wine which I so much esteem, under an absolute assurance that there shall be nothing in it but the pure juice of the grape. If there be any fear that it will not keep without brandy, let that be my risk.

Your offer is the more acceptable as I find that your correspondent in Richmond and mine is the same. Colonel B. Peyton will always pay on demand the cost of the wine on your draught and the general instruction which I will send him, and I shall be glad to receive now a thirty gallon cask as soon as you can furnish it with a certainty of its purity, adding to your draught for its cost that of the twenty bottles recently received.

I am not sufficiently acquainted with the process of wine making in France to give you any useful information on the subject. This fact only I know, that no man who makes a wine of reputation in that country would put a teaspoonful of brandy into it were you to offer him a guinea a bottle for it, because, as he says, it would forever destroy the character of his wine. This operation is always performed by the exporting merchant, and those of Bordeaux expressed their astonishment to me at the instructions they always received from American customers to put such a proportion of brandy into the wines they called for. It will be a satisfaction to me to learn from yourself that you can furnish me with this wine with an assurance that it shall be pure and unadul-

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terated. Accept my salutations of esteem and respect.

P. S.—What is deemed the age of perfect ripeness of this wine, and the proper one for drinking it?

TO JAMES MONROE.[1]

MONTICELLO, June 14, 1823.

DEAR SIR,—The reasons assigned in your favor of the 7th for preferring to retain Loudon instead of Albemarle are such as cannot be controverted. The society of our children is the sovereign balm of life, and the older we grow the more we need it to fill up the void made by the daily losses of the companions and friends of our youth. Nor ought we of this neighborhood to regret a preference so conducive to your own happiness. We must submit, as in other cases, to unwelcome occurrences, and hope that in the endeavor to retain a part of the estate here we see a possibility of your visiting us occasionally. To me the loss will be greater than to younger persons. Age and debility have obliged me to put all my affairs into the hands of my grandson.[2] Even a daily ride, necessary to keep up my health and spirits, is now at a loss for objects to encourage it. To have termi-

[1] This letter is printed from a rough draught, with numerous omissions and interlineations.—EDS.

[2] Thomas Jefferson Randolph, eldest son of Thomas Mann and Martha (Jefferson) Randolph. He was born at Monticello, Sept. 12, 1792, and died at Edge Hill, Oct. 8, 1875.—EDS.

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nated it sometimes at Oakwood with a half hour's conversation with those whose minds, familiarised with the same scenes, would range with sympathy over the same topics, would have chequered the monotony of a country life disengaged from country occupations. The University, indeed, gives me some welcome employment. If the legislature will declare at once to have given what they have hitherto called a loan. so that I may see the institution opened on the high ground I have ever contemplated, I shall sing my *nunc dimittis* with pleasure.

The case in which you have so kindly endeavored to mediate is too long for explanation by letter. I must reserve it for conversation when we meet again. In the meanwhile no time is lost, for as long as the party continues his present habits there would be neither satisfaction nor safety in his society; and his reclamation from them I believe to be absolutely desperate. This, however, does not lessen our sense of the kindness and friendship of your wish to relieve us from the most constant and poignant affliction of our lives. And with the assurance of our gratitude for this, accept that of my constant and cordial friendship and respect.

TO JOSHUA DODGE.

MONTICELLO, Aug. 3, 1823.

DEAR SIR,—I am happy by your favor of July 7, to hear from you after your tour through so much of the

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United States, and particularly to receive the result of your observations of the general ascendancy of republicanism and of good dispositions towards Spain. The two sentiments spring from the same root. The republican regeneration of Massachusetts gives me real joy. The union of New England and Virginia alone carried us through the revolution. Five steady votes were given by them on every question, and we picked up scatterers from the other less decided States which always secured a majority. Since that we are become aliens and almost hostile; and why? I know not. Virginia has never swerved a hair's breadth from the line of republicanism and Americanism. Massachusetts has strayed a little into the paths of federalism and Anglicism; but a good portion of her citizens have always remained loyal to true principles; they have brought their wandering brethren back again to their fold, and we joyfully receive them with the fraternal embrace. We shall now, I hope, feel towards each other the sentiments which united us in the revolution and become again truly brethren of the same principle.

I am just recovered from an illness of three weeks and am obliged to borrow the pen of another to assure you of my great esteem and respect.

P. S. Mr. Degrand has been so kind as to inform me that he received and forwarded my duplicate letters to your house for my annual supplies.

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TO THOMAS COX.

MONTICELLO, Sept. 5, 1823.

DEAR SIR,—Your favor of July 16, was received in due time, and I am thankful for the trouble you propose to undertake to procure for me at this ensuing vintage a barrel of the Scuppernon pure juice without any adulteration of brandy or other thing. I would wish it to be sent early in November when it will be endangered by neither the heat or cold of the season. I will give that cask a fair trial, as well whether it will keep without brandy as to ascertain at what age it is properly ripe for use. I have drunk it at four years old, and it was the best I ever drank. I believe it is a wine which requires a certain age, and if it improves with age it is a proof it has a body of its own, not needing brandy. As this is destined for a distant time I must ask the favor of you to procure me a couple of quarter casks for immediate use. Let them be as old and with as little brandy as can be found, and if the mixture be of French instead of apple brandy I shall gladly pay the difference of their cost. I think it worth while to go to the expense of double casking them to guard against adulteration on their passage. If you will be so good as to forward them to Colonel B. Peyton of Richmond, and to draw on him on my account for their cost he will honor your draft. If this wine can mature itself without being brandied, it will attain a high character. Otherwise it must still be unbrandied and drunk at

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the age to which it will keep itself; for the brandy flavor in wine will never satisfy a practised palate. Accept the tender of my great esteem and respect.

MARQUIS DE LAFAYETTE TO THOMAS JEFFERSON.

La Grange, December 20th, 1823.

My dear Friend,—It is a very long while since my eyes were gratified with a sight of your handwriting; I know that occupation is a fatigue to you, and would not be importunate. But when you indulge the pleasure to converse with absent friends, remember few are as old, and none can be more happy than I am in the testimonies of your welfare and affection.

Every account I receive from the United States is a compensation for European disappointments and disgusts. There our revolutionary hopes have been fulfilled, and although I must admire the observations of such a witness as my friend Jefferson, we may enjoy the happy thought that never a nation has been so completely free, so rapidly prosperous, so generally enlightened. Look, on the contrary, to old Europe. Spain, Portugal, Italy, amidst the patriotic wishes of the less ignorant part of the people and the noble sentiments of a few distinguished characters, have shown themselves unequal to a regeneration, less on account of the criminal attacks of diabolical alliance and the perfidious friendships of Great Britian, than because the great masses are still

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under the influence of prejudice, superstition, vicious habits, and because intrigue and corruption have found their way among the aristocratical part of their patriots. German patriotism and philanthropy evaporates in romantic ideology; two nations alone, French and English, or one of them, could take the lead in European emancipation. But in England both Whigs and Tories are tenacious of a double aristocracy, their own with respect to the Commoners, that of their island over all the countries of the earth. There is, I am told, more liberality among their Radicals; but hitherto we must take them at their word, as power is elsewhere, and they do nothing to obtain it. You have been a sharer, my dear friend, in my enthusiastic French hopes; you have seen the people of France truly a great nation, when the rights of mankind, proclaimed, conquered, supported by a whole population, were set up as a new imported American doctrine, for the instruction and example of Europe, when they might have been the sole object and the glorious price of a first irresistible impulsion, which has since been spent into other purposes by the subsequent vicissitudes of government; the triple counter revolution of Jacobinism, Bonapartism, and Bourbonism, in the first of which disguised Aristocracy had also a great part, has worn out the springs of energetic patriotism. The French people are better informed, less prejudiced, more at their ease on the point of property, industry, habits of social equality in many respects, than before the

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Revolution. But from the day when the National Constitution, made, sworn, worshiped by themselves, was thrown down on a level with the edicts of arbitrary kings, to the present times, when a *chartre octroyée* is invocated by the more liberal among our publicists, so many political heresies have been professed, so dismal instances of popular tyranny are remembered, so able institutions of despotism have crushed all resistance, that, if you except our young generations, egotism and apathy, not excluding general discontent, are the prevailing disposition. In the meanwhile all adversaries of mankind,—coalesced kings, British aristocrats, Continental nobles, Coblentz emigrants, restored Jesuits, are pushing their plot with as much fury but more cunning than they had hitherto evinced. Emperor Alexander is now the chief of European counter revolution; what he and his allies will do, either in concert or in competition with England, to spoil the game of Greece, and to annoy the new republics of America, I do not know; but although the policy of the United States has been hitherto very prudent, it seems to me they cannot remain wholly indifferent to the destruction, on the American Continent, of every right proclaimed in the immortal Declaration of Independence.

Among the destitutions which the spirit of counter revolution and priestcraft are every day operating in the French seminaries of learning, there is one victim which cannot but be particularly interesting to you. I mean M. Botta, the author of an Italian history of

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the war of independence, translated first in French, and since, under your auspices, in English. M. Botta, who has obtained your approbation, fully deserves it, and has a proper sense of the testimonies of your esteem, was a peaceful worthy *principal* of the College of Rouen, where his rectorship has been taken from him, under no plausible pretence, unless it is for the supposed congeniality of his opinion with our American doctrines. He had at first, or rather his friends had for him, the idea of his going to the United States. But age, bad health, a family of children keep him in France. I have been applied to on the subject of an American subscription in his behalf. Don't you think, my dear friend, it might take place; and then who could be better fit to give it proper weight and effect than you who have valued the work and the historian so far as to superintend translation for the benefit of the American youth, and give him personal marks of your regard?

I have been desired to enquire whether you have received from Doctor *Defendente Sacchi* a copy of a moral novel, called *Oriele*. The hero of the tale is made to travel throughout the United States, where he has the pleasure to converse with Mr. Jefferson when due homage is paid to the venerated interlocutor. Another copy has been sent to the American Philosophical Society at Philadelphia. No answer has come to hand. The doctor is a respectable scientific inhabitant of Pavia, chief *redacteur* of an important work, *Collection of the Classical Metaphi-*

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sicians. You will easily [see?] by whom of our friends I am in this affair commissioned. He is well, and so are both our families, who request their best respects to be presented to you. Remember me to Mrs. Randolph, and receive the most affectionate good wishes of your old tender friend.

P. S. I was preparing to send the above letter when I have been blessed with yours, November 4th,[1] enclosing one for M. de Tracy. How deeply I have been affected with the account you give of your health, and the affectionate expressions of your sentiments for me, your friendly heart will better feel than words could tell. I shall answer you in a short time. But must here express the pleasure of a paternal friend when I found in your letter, and had to communicate to Miss Wright your opinion of *A Few Days in Athens*, which her high veneration for you makes her so worthy to enjoy. I shall at some time send you a short biographical note for good Mr. Botta.

I am for the second time a great-grandfather. The whole family beg to be respectfully remembered.

[1] The letter referred to was written by Jefferson to Lafayette on Nov. 4, 1823. See vol. xv. p. 490.

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TO SAMUEL PARR.[1]

MONTICELLO, IN VIRGINIA, April 26, 1824.

MUCH RESPECTED SIR,—A letter addressed to you from a perfect stranger undoubtedly requires apology. This I can only find in the character of the subject producing it, a subject cherished in every literary breast. The State of Virginia, of which I am a native and resident, is engaged in the establishment of an university on a scale of such extent as may give it eminence on this side of the Atlantic. I am entrusted with a share in its administration and government. We are anxious to place in it none but professors of the first grade of science in their respective lines, and for these we must go to countries where that highest grade exists, and of preference to Great Britain, the land of our own language, morals, manners, and habits. For a professor of the classical languages particularly, of the highest attainments in them, Oxford necessarily offers itself as the institution most eminent in the world in that branch of learning; and of whose judgment there could we so much wish to be availed as that of the oldest and purest classic now living? This, then, Sir, is the object which produces the obtrusion of this letter on you. It will be handed you by Mr. F. W. Gilmer, a gentleman of high qualfications in various branches

[1] Samuel Parr, one of the most eminent classical scholars of his time and a strong Whig partisan, was born at Harrow-on-the-Hill, England, Jan. 26, 1746–7, and died at Hatton, March 6, 1825. See Dictionary of National Biography, vol. xliii. p. 364.—EDS.

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of science, of a correct and honorable character, worthy of all confidence and of any attention you may be pleased to bestow on him. He is authorized to select professors for us; but being an entire stranger in the country to which he is sent to make this selection, if unaided by faithful advice from others, he may be liable to gross error and imposition in distinguishing characters of the degree of science we seek, of sober and correct morals and habits,—indispensable qualities in a professor in this country,—and of accommodating and peaceable dispositions, so necessary for the harmony of the institution. Your knowledge, respected Sir, of persons, characters and qualifications may guide and guard him in this difficult research. May we venture to ask the benefit of it, and your patronage of the mission on which Mr. Gilmer goes? To myself it would be a peculiar gratification to have an associate so eminent in the performance of offices promising so much good to those we are to leave behind us, and at an age so advanced as to indulge us in the prospect of few remaining occasions of being useful to the generations to come. With my thanks for any good offices you can render our infant institution, be pleased to accept the assurances of my high veneration, esteem, and consideration.

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TO DUGALD STEWART.[1]

MONTICELLO IN VIRGINIA, April 26, 1824.

DEAR SIR,—It is now thirty-five years since I had the great pleasure of becoming acquainted with you in Paris, and since we saw together Louis XVI. led in triumph by his people through the streets of his capital; these years, too, have been like ages in the events they have engendered without seeming at all to have bettered the condition of suffering man. Yet his mind has been opening and advancing, a sentiment of his wrongs has been spreading, and it will end in the ultimate establishment of his rights. To effect this nothing is wanting but a general concurrence of will, and some fortunate accident will produce that. At a subsequent period you were so kind as to recall me to your recollection on the publication of your invaluable book on the Philosophy of the Human Mind, a copy of which you sent me, and I have been happy to see it become the text book of most of our colleges and academies, and pass through several reimpressions in the United States. An occurrence of a character dear to us both leads again to a renewal of our recollections and associates us in an occasion of still rendering some service to those we are about to leave. The State of Virginia, of which I am a native and resident, is establishing an university on a scale

[1] Dugald Stewart, one of the most famous of the Scottish metaphysicians, was born in Edinburgh, Nov. 22, 1753, and died there June 11, 1828. See Dictionary of National Biography, vol. liv. pp. 282–286. —EDS.

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as extensive and liberal as circumstances permit or call for. We have been four or five years in preparing our buildings, which are now ready to receive their tenants. We proceed, therefore, to the engaging professors, and anxious to receive none but of the highest grade of science in their respective lines, we find we must have recourse to Europe, where alone that grade is to be found, and to Great Britain of preference, as the land of our own language, morals, manners, and habits. To make the selection we send a special agent, Mr. Francis W. Gilmer, who will have the honor of delivering you this letter. He is well educated himself in most of the branches of science, of correct morals and habits, an enlarged mind. and a discretion meriting entire confidence. From the universities of Oxford and Cambridge, where we expect he will find persons duly qualified in the particular branches in which these seminaries are respectively eminent, he will pass on to Edinburgh, distinguished for its school of Medicine as well as of other sciences, but when arrived there he will be a perfect stranger, and would have to grope his way in darkness and uncertainty; you can lighten his path, and to beseech you to do so is the object of this letter. Your knowledge of persons and characters there can guard him against being misled and lead him to the consummation of our wishes. We do not expect to engage the high characters there who are at the head of their schools, established in offices, honors, and emoluments which can be bettered no where. But

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we know there is always a junior set of aspirants, treading on their heels, ready to take their places, and as well and sometimes better qualified than they are. These persons, unsettled as yet, surrounded by competitors of equal claims, and perhaps greater credit and interest, may be willing to accept immediately a comfortable certainty here in place of uncertain hopes there, and a lingering delay of even these. From this description of persons we may hope to procure characters of the first order of science. But how to distinguish them? For we are told that were the mission of our agent once known, he would be overwhelmed with applicants, unworthy as well as worthy, yet all supported on recommendations and certificates equally exaggerated, and by names so respectable as to confound all discrimination. Yet this discrimination is all important to us. An unlucky selection at first would blast all our prospects. Let me beseech you, then, good Sir, to lead Mr. Gilmer by the hand in his researches, to instruct him as to the competent characters, and guard him against those not so. Besides the first degree of eminence in science, a professor with us must be of sober and correct morals and habits, having the talent of communicating his knowledge with facility, and of an accommodating and peaceable temper. The latter is all important for the harmony of the institution. For minuter particulars I will refer you to Mr. Gilmer, who possesses a full knowledge of everything and our full confidence in everything. He takes with him

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plans of our establishment, which will show the comfortable accommodations provided for the professors, whether with or without families; and by the expensiveness and extent of the scale they will see it is not an ephemeral thing to which they are invited.

A knowledge of your character and dispositions to do good dispenses with all apology for the trouble I give you. While the character and success of this institution, involving the future hopes and happiness of my country, will justify the anxieties I feel in the choice of its professors, I am sure the object will excite in your breast such sympathies of kind disposition, as will give us the benefits we ask of your counsels and attentions. And, with my acknowledgments for these, accept assurances of constant and sincere attachment, esteem and respect.

TO JOSEPH COOLIDGE, JR.[1]

MONTICELLO, January 15, 1825.

DEAR SIR,—I owe you many thanks for the two last books you have been so kind as to send me. I have derived a great deal of information from Russel for the use of our University. I had only a borrowed copy, and had been disappointed in getting one from

[1] This letter is printed from the original in the possession of Archibald Cary Coolidge. Joseph Coolidge, Jr., was the son of Joseph and Elizabeth (Bulfinch) Coolidge, and was born in Boston Oct. 31, 1798. He graduated at Harvard College in 1817, was married to the favorite granddaughter of Thomas Jefferson in May, 1825, and died in his native city Dec. 14, 1879.—EDS.

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England. Bosworth is a treasure of Anglo-Saxon learning. There is much in him valuable and new to me. He treads, indeed, in the footsteps of Dr. Hickes and his followers, in endeavoring to make it a language of learned construction, giving it the genders, numbers, declensions, conjugations, and other scaffoldings of the Greek and Latin, and encumbering it with difficulties even beyond theirs, whereas by simplifying and fixing its orthography we find it is old English, only one age senior to Piers Ploughman, and that it becomes like that the language we speak, as readily intelligible as other old English.

On your recommendation of Mr. Hilliard, and explanation of the means he had established of procuring books from the several book-marts of Europe, I accepted willingly his proposition to become the furnisher of books to our University. The enclosed letter contains a catalogue of the school books we shall immediately want, and of those of a higher order which will be recommended to our students. I am so unwilling to give him false expectations of the extent of our market, which might end in disappointment and loss, that I hope I am under the mark in what I recommend. It is impossible for us as yet to conjecture the number of students which may offer. There are many circumstances of detail in the local condition of the place, known to yourself and not communicable by letter. I have, therefore, taken the liberty of enclosing to you the letter for

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him, and requesting you to deliver it in person, as you could answer the many enquiries he may be disposed to make, and possess him of the true state of things here. Possibly we may find it convenient to employ Mr. Hilliard to collect our library from the different countries of Europe, on a reasonable commission, we advancing the money. To preserve our exemption from duties he would be to be made merely our agent, the property of the books to be, for that purpose, vested in the University. On this my colleagues will be to decide. The amount, you know, we estimate at about 23,000 dollars.

I proposed to you to suggest to some editor of books in Boston the printing an octavo edition of Wilson's Ornithology, giving plates of octavo size also, with mere sketchings of the forms of the birds in a light way. I do not know whether the lithographic art is practised in Boston. If it is it would be quite equal to the object of this work, and so cheap, as I learn, as to cost little more than printing.

In a letter I received last evening from Mr. Appleton. our consul at Leghorn, a gentleman of intelligence, is the following paragraph: "I have been informed that there has been lately discovered at Athens, in a subterranean vault, a collection of 2,000 volumes or rolls of papyrus of Grecian authors, in a great state of perfection, with several statues of the highest order of sculpture, which it was probable was sunk by an earthquake, or was buried to save it from the barbarous hands of Mussulmen." I give

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it in his own words, and am sorry it stands on the indefinite ground of "I have been informed." If true, we may recover what had been lost of Diodorus Siculus, Polybius, and Dion Cassius. I would rather, however, it should have been of Livy, Tacitus and Cicero.

We are in the hourly expectation of the arrival of the complement of our Professors, and shall open the University within one fortnight after it shall be known that they are landed on our shores. Our family is all well, and hold you in affectionate recollections. I join them sincerely in these, and pray you to be assured of my cordial friendship and respect.

TO JOSEPH COOLIDGE, JR.[1]

MONTICELLO, April 12, 1825.

DEAR SIR,—The arrival of our Professors from abroad has at length enabled us to get our University into operation. Their failure to arrive by the day we had announced for its commencement lost us for awhile many students who supposing, with most of us, from the length of time they had been out, that they must have perished, engaged themselves elsewhere. We began on the 7th of March with between thirty and forty. Since that they have been coming in, and are still coming almost daily. They are at this time sixty-five. I wish

[1] Printed from the original in the possession of Archibald Cary Coolidge.—EDS.

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they may not get beyond one hundred this year, as I think it will be easier to get into an established course of order and discipline with that than with a greater number. Our English Professors give us perfect satisfaction. The choice has been most judiciously made. They are of very high order in their respective sciences, correct in their habits, encounter cheerfully whatever is novel to them, and are zealous to promote their respective schools. Our Professors of Chemistry, and Moral Philosophy are chosen from among our own fellow citizens, as will be our Professor of Law, not yet named. The first of these just arrived, and the second hourly expected. On his arrival the Faculty will form themselves into a board, and commence the exercise of their functions of order and discipline, for which the necessity is already apparent by the incipient irregularities of some of the youths.

Your kind dispositions toward our University will sometimes, I fear, be the source of trouble to you. We understand that the art of bellmaking is carried to greater perfection in Boston than elsewhere in the United States. We want a bell which can *generally* be heard at the distance of two miles, because this will ensure its being *always* heard at Charlottesville. As we wish it to be sufficient for this, so we wish it not more so, because it will add to its weight, price, and difficulty of management. Will you be so good as to enquire what would be the weight and price of such a bell, and inform me of it?

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I have engaged Mr. Hilliard as agent for the University in the purchase of its library; and the sum to be put into his hands being considerable (15,000 dollars), I have required security from him, and taken the liberty of referring him to yourself and Mr. Ticknor for judging and certifying to me its sufficiency.

The books you have been so kind as to present to the University have been received and were opened yesterday. They came in good condition, were peculiarly well bound, and entirely acceptable. I think there was but one which proved a duplicate. Permit me in the name of the University and Visitors to return you their thanks for this handsome donation.

The object of the welcome visit we expect from you soon is such as would render the presence of your parents, Mr. and Mrs. Coolidge, peculiarly gratifying. I am a stranger to their ages and condition of health, and how far these would admit of such a journey, and, therefore, I must only say that they would be received with the most sincere cordiality; so, if any other of your friends, led by affection to you or by curiosity, should be willing to accompany you, it would give us great pleasure.

I send you a copy of our regulations, and pray you to be assured of my affectionate attachment and great respect.

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TO ELLEN W. COOLIDGE.[1]

MONTICELLO, August 27, 1825.

Your affectionate letter, my dear Ellen, of the 1st inst. came to hand in due time. The assurances of your love, so feelingly expressed, were truly soothing to my soul, and none were ever met with warmer sympathies. We did not know until you left us what a void it would make in our family. Imagination had illy sketched its full measure to us; and, at this moment, everything around serves but to remind us of our past happiness, only consoled by the addition it has made to yours. Of this we are abundantly assured by the most excellent and amiable character to which we have committed your future well-being, and by the kindness with which you have been received by the worthy family into which you are now engrafted. We have no fear but that their affections will grow with their growing knowledge of you, and the assiduous cultivation of these becomes the first object in importance to you. I have no doubt you will find also the state of society there more congenial with your mind than the rustic scenes you have left although these do not want their points of endearment. Nay, one single circumstance changed, and their scale would hardly be the lightest. One fatal stain deforms what nature had bestowed on us of her fairest gifts.

[1] This letter is printed from the original in the possession of Archibald Cary Coolidge.—EDS.

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I am glad you took the delightful tour which you describe in your letter. It is almost exactly that which Mr. Madison and myself pursued in May and June, 1791. Setting out from Philadelphia, our course was to New York, up the Hudson to Albany, Troy, Saratoga, Fort Edward, Fort George, Lake George. Ticonderoga, Crown Point, penetrated into Lake Champlain, returned the same way to Saratoga, thence crossed the mountains to Bennington, Northampton, along Connecticut River to its mouth, crossed the Sound into Long Island, and along its northern margin to Brooklyn, re-crossed to New York, and returned. But from Saratoga till we got back to Northampton was then mostly desert. Now it is what thirty-four years of free and good government have made it. It shows how soon the labor of men would make a paradise of the whole earth, were it not for misgovernment, and a diversion of all his energies from their proper object—the happiness of man,—to the selfish interests of kings, nobles, and priests.

Our University goes on well. We have passed the limit of 100 students some time since. As yet it has been a model of order and good behavior, having never yet had occasion for the exercise of a single act of authority. We studiously avoid too much government. We treat them as men and gentlemen, under the guidance mainly of their own discretion. They so consider themselves, and make it their pride to acquire that character for their institution. In

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short, we are as quiet on that head as the experience of six months only can justify. Our professors, too, continue to be what we wish them. Mr. Gilmer accepts the Law chair, and all is well.

My own health is what it was when you left me. I have not been out of the house since, except to take the turn of the Roundabout twice; nor have I any definite prospect when it will be otherwise.

I shall not venture into the region of small news, of which your other correspondents of the family are so much better informed. I am expecting to hear from Mr. Coolidge on the subject of the clock for the Rotunda. Assure him of my warmest affections and respect, and pray him to give you ten thousand kisses for me, and they will still fall short of the measure of my love to you. If his parents and family can set any store by the esteem and respect of a stranger, mine are devoted to them.

TO JOSEPH COOLIDGE, JR.[1]

MONTICELLO, October 13, [1825].

DEAR SIR,—It is so long since I ought to have written to you that I am ashamed to quote your last date. The information particularly which you were so kind as to obtain and furnish me as to the cost of a college clock should have been answered; but finding the price you mentioned far beyond our ex-

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pectation and funds, I took time to have other enquiries made. These, however, did not result in bringing the cost more within our means; on the contrary, 40 cents the pound were asked for a bell in Philadelphia, instead of 35, the price with you. We are obliged, therefore, to do without, until our funds are improved; and this ought to have been said to you sooner.

The news of our neighborhood can hardly be interesting to you, except what may relate to our University, in which you are so kind as to take an interest. And it happens that a serious incident has just taken place there, which I will state to you the rather, as of the thousand versions which will be given not one will be true. My position enables me to say what is so, but with the most absolute concealment from whence it comes; regard to my own peace requiring that,—except with friends whom I can trust and wish to gratify with the truth.

The University had gone on with a degree of order and harmony which had strengthened the hope that much of self government might be trusted to the discretion of the students of the age of 16 and upwards, until the 1st instant. In the night of that day a party of fourteen students, animated first with wine, masked themselves so as not to be known, and turned out on the lawn of the University, with no intention, it is believed, but of childish noise and uproar. Two professors hearing it went out to see what was the matter. They were received with

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insult, and even brick-bats were thrown at them. Each of them seized an offender, demanded their names (for they could not distinguish them under their disguise), but were refused, abused, and the culprits calling on their companions for a rescue, got loose, and withdrew to their chambers. The Faculty of Professors met the next day, called the whole before them, and in address, rather harsh, required them to denounce the offenders. They refused, answered the address in writing and in the rudest terms, and charged the Professors themselves with false statements. Fifty others, who were in their rooms, no ways implicated in the riot and knowing nothing about it, immediately signed the answer, making common cause with the rioters, and declaring their belief of their assertions in opposition to those of the Professors. The next day chanced to be that of the meeting of the Visitors; the Faculty sent a deputation to them, informing them of what had taken place. The Visitors called the whole body of students before them, exhorted them to make known the persons masked, the innocent to aid the cause of order by bearing witness to the truth, and the guilty to relieve their innocent brethren from censures which they were conscious that themselves alone deserved. On this the fourteen maskers stepped forward and avowed themselves the persons guilty of whatever had passed, but denying that any trespass had been committed. They were desired to appear before the Faculty, which they did. On the

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evidence resulting from this enquiry, three, the most culpable, were expelled; one of them, moreover, presented by the grand jury for civil punishment (for it happened that the district court was then about to meet). The eleven other maskers were sentenced to suspensions or reprimands, and the fifty who had so gratuitously obtruded their names into the offensive paper retracted them, and so the matter ended.

The circumstances of this transaction enabled the Visitors to add much to the strictness of their system as yet new. The students have returned into perfect order under a salutary conviction they had not before felt that the laws will in future be rigorously enforced, and the institution is strengthened by the firmness manifested by its authorities on the occasion. It cannot, however, be expected that all breaches of order can be made to cease at once, but from the vigilance of the Faculty and energy of the civil power their restraint may very soon become satisfactory. It is not perceived that this riot has been more serious than has been experienced by other seminaries; but, whether more or less so, the exact truth should be told, and the institution be known to the public as neither better nor worse than it really is.

All here are well, except myself, and I had sensibly improved, insomuch as to be able to ride two or three miles a day in a carriage and on our level Roundabouts. But going backwards and forwards on the rough roads to the University for five days succes-

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sively has brought on me again a great degree of sufferance, which some days of rest and recumbence will, I hope, relieve. My dear Ellen may be told that at the head of the expelled, as of the riot, was W. M. C., expelled from two other seminaries before. A second was an exile from every school he had ever been at, who had entered and paid his fees only that morning. The third, a worthy young man, not of her acquaintance, whom all lamented, Visitors, Professors, and students, but he had unfortunately too much signalized himself in this affair. Present to her all the blessings of an affectionate grandfather, and be assured of the warmth and sincerity of his attachment and respect to you.

TO ELLEN W. COOLIDGE.[1]

MONTICELLO, November 14, 1825.

MY DEAR ELLEN,—In my letter of October 13 to Mr. Coolidge, I gave an account of the riot we had had at the University and of its termination. You will both, of course, be under anxiety till you know how it has gone off. With the best effects in the world, having let it be understood from the beginning that we wished to trust very much to the discretion of the students themselves for their own government. With about four-fifths of them this did

[1] This letter is printed from the original in the possession of Archibald Cary Coolidge.—EDS.

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well, but there were about fifteen or twenty bad subjects who were disposed to try whether our indulgence was without limit. Hence the licentious transaction of which I gave an account to Mr. Coolidge; but when the whole mass saw the serious way in which that experiment was met, the Faculty of Professors assembled, the Board of Visitors coming forward in support of that authority, a grand jury taking up the subject, four of the most guilty expelled, the rest reprimanded, severer laws enacted and a rigorous execution of them declared in future, —it gave them a shock and struck a terror, the most severe as it was less expected. It determined the well-disposed among them to frown upon everything of the kind hereafter, and the ill-disposed returned to order from fear, if not from better motives. A perfect subordination has succeeded, entire respect towards the professors, and industry, order, and quiet the most exemplary, has prevailed ever since. Every one is sensible of the strength which the institution has derived from what appeared at first to threaten its foundation. We have no further fear of anything of the kind from the present set, but as at the next term their numbers will be more than doubled by the accession of an additional band, as unbroken as these were, we mean to be prepared, and to ask of the legislature a power to call in the civil authority in the first instant of disorder, and to quell it on the spot by imprisonment and the same legal coercions provided against disorder generally com-

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mitted by other citizens, from whom, at their age, they have no right to distinction.

We have heard of the loss of your baggage, with the vessel carrying it, and sincerely condole with you on it. It is not to be estimated by its pecuniary value, but by that it held in your affections,—the documents of your childhood, your letters, correspondencies, notes, books, etc., etc., all gone! and your life cut in two, as it were, and a new one to begin, without any records of the former. John Hemmings was the first who brought me the news. He had caught it accidentally from those who first read the letter from Colonel Peyton announcing it. He was *au desespoir!* That beautiful writing desk he had taken so much pains to make for you! everything else seemed as nothing in his eye, and that loss was everything. Virgil could not have been more afflicted had his Aeneid fallen a prey to the flames. I asked him if he could not replace it by making another. No; his eyesight had failed him too much, and his recollection of it was too imperfect. It has occurred to me, however, that I can replace it, not, indeed, to you, but to Mr. Coolidge, by a substitute, not claiming the same value from its decorations, but from the part it has *borne* in our history and the events with which it has been associated. I received a letter from a friend in Philadelphia lately, asking information of the house, and room of the house there. in which the Declaration of Independence was written, with a view to future celebra-

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tions of the Fourth of July in it, another enquiring whether a paper given to the Philosophical Society there, as a rough draught of that Declaration was genuinely so. A society is formed there lately for an annual celebration of the advent of Penn to that place. It was held in his ancient mansion, and the chair in which he actually sat when at his writing table was presented by a lady owning it, and was occupied by the president of the celebration. Two other chairs were given them, made of the elm under the shade of which Penn had made his first treaty with the Indians. If then things acquire a superstitious value because of their connection with particular persons, surely a connection with the great Charter of our Independence may give a value to what has been associated with that; and such was the idea of the enquirers after the room in which it was written. Now I happen still to possess the writing-box on which it was written. It was made from a drawing of my own by Ben. Randall, a cabinetmaker in whose house I took my first lodgings on my arrival in Philadelphia in May, 1776, and I have used it ever since. It claims no merit of particular beauty. It is plain, neat, convenient, and, taking no more room on the writing table than a moderate quarto volume, it yet displays itself sufficiently for any writing. Mr. Coolidge must do me the favor of accepting this. Its imaginary value will increase with years, and if he lives to my age, or another half-century, he may see it carried in the procession of

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our nation's birthday, as the relics of the saints are in those of the Church. I will send it through Colonel Peyton, and hope with better fortune than that for which it is to be a substitute.[1]

I remark what you say in your letter to your mother relative to Mr. Willard and our University clock. Judging from that that he is the person whom Mr. Coolidge would recommend, and having received from Dr. Waterhouse a very strong recommendation of him, you may assure the old gentleman from me that he shall have the making of it. We have lately made an important purchase of lands, amounting to 7000 dollars, and the government is taking from us, under their old and new tariff, 2700 dollars duty on the marble caps and bases of the portico of our rotunda, of ten columns only. These things try our funds for the moment. At the end of the year we shall see how we stand, and I expect we may be able to give the final order for the clock by February.

I want to engage you as my agent at Boston for certain articles not to be had here, and for such only; but it will be on the indispensable condition that you keep as rigorous an account of dollars and cents

[1] This interesting relic was exhibited at the Centennial Celebration in Boston, July 4, 1876. (See Winthrop's Addresses and Speeches, vol. iii. pp. 378, 379.) Subsequently it was given to the United States by the heirs of Mr. Coolidge (see Proceedings held in the Senate and House of Representatives, April 23, 1880, on the Occasion of the Presentation of Thomas Jefferson's Writing-Desk to the United States by the Heirs of the late Joseph Coolidge, Jr.).—Eds.

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as old Yerragan, our neighbor, would do. This alone can induce friends to ask services freely, which would otherwise be the asking of presents, and amount to a prohibition. We should be very glad occasionally to get small supplies of the fine dumb cod-fish to be had at Boston, and also of the tongues and sounds of the cod. This selection of the articles I trouble for is not of such as are better there than here; for on that ground we might ask for every thing from thence, but such only as are not to be had here at all. Perhaps I should trespass on Mr. Coolidge for one other article. We pay here two dollars a gallon for bad French brandy. I think I have seen in Degrand's price current Marseilles brandy, from Dodge and Oxnard, advertised good at one dollar; and another kind called Seignettes, which I am told is good Cognac, at one dollar and 25 cents. I will ask of you then a supply of a kental of good dumb fish, and about 20 or 30 lbs. of tongues and sounds; and of Mr. Coolidge a 30 gallon cask of Dodge and Oxnard's Marseilles brandy, if tolerably good at one dollar or thereabouts, but double cased, to guard against spoliation. Knowing nothing of the prices of the fish, I will at a venture desire Colonel Peyton to remit 60 dollars to Mr. Coolidge immediately, and any little difference between this and the actual cost either way may stand over to your next account. We should be the better perhaps of your recipe for dressing both articles.

I promised Mr. Ticknor to inform him at times

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how our University goes on. I shall be glad if you will read to him that part of this letter which respects it, presuming Mr. Coolidge may have communicated to him the facts of my former letter to him. These facts may be used ad libitum, only keeping my name out of sight. Writing is so irksome to me, especially since I am obliged to do it in a recumbent posture, that I am sure Mr. Ticknor will excuse my economy in this exercise. To you perhaps I should apologize for the want of it on this occasion. The family is well. My own health changes little. I ride two or three miles in a carriage every day. With my affectionate salutations to Mr. Coolidge, be assured yourself of my tender and constant love.

TO ELLEN W. COOLIDGE.[1]

MONTICELLO, Mar. 19, 1826.

MY DEAR ELLEN,—Your letter of the 8th was received the day before yesterday, and as the season for engrafting is passing rapidly by I will not detain the apple-cuttings for Mr. Gray (until I may have other matter for writing a *big* letter to you), but I send a dozen cuttings, as much as a letter can protect, by our first mail, and wish they may retain their vitality until they reach him. They

[1] This letter is printed from the original in the possession of Archibald Cary Coolidge.—EDS.

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are called the Taliaferro apple, being from a seedling tree discovered by a gentleman of that name near Williamsburg, and yield unquestionably the finest cider we have ever known, and more like wine than any liquor I have ever tasted which was not wine. If it is worth reminding me of the ensuing winter, I may send a larger supply, and in better time, through Col. Peyton.

Our brandy, fish, tongues, and sounds are here, and highly approved. The piano forte is also in place, and Mrs. Carey *happening* here has exhibited to us its full powers, which are indeed great. Nobody slept the first night, nor is the tumult yet over on this the third day of its emplacement. These things will draw trouble on you; for we shall no longer be able to drink Raphael's *imitation brandy* at two dollars the gallon, nor to be without the luxury of the fish, and especially the tongues and sounds, which we consider as a great delicacy.

All here are well, and growing in their love to you, and none so much as the oldest, who embraces in it your other self, so worthy of all our affections, and so entirely identified in them with yourself.

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TO JOSEPH COOLIDGE, JR.[1]

MONTICELLO, June 4, 1826.

DEAR SIR,—You have heretofore known that the ability of the University to meet the necessary expenses of a bell and clock depended on the remission by Congress of the duties on the marble bases and capitals used in our buildings, a sum of nearly 3000 dollars. The remission is granted, and I am now authorized to close with Mr. Willard for the undertaking of the clock, as proposed in your letter of Aug. 25. I must still, however, ask your friendly intermediacy, because it will so much abridge the labors of the written correspondence; for there will be many minutiæ which your discretion can direct, in which we have full confidence, and shall confirm as if predirected. I have drawn up the material instructions on separate papers, which put into Mr. Willard's hands will, I trust, leave little other trouble for you. We must avail ourselves of his offer (expressed in the same letter) to come himself and set it up, allowing the compensation, which, I am sure, he will make reasonable. The dial-plate had better be made at Boston, as we can prepare our aperture for it, of sixty inches, with entire accuracy. We wish him to proceed with all practicable dispatch, and are ready to make him whatever advance he usually requires; and we would rather make it immediately,

[1] Printed from the original in the possession of Archibald Cary Coolidge.—EDS.

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as we have a sum of money in Boston which it would be more convenient to place in his hands at once than to draw it here and have to remit it again to Boston. If it would be out of his line to engage for the bell also, be so good as to put it into any hands you please, and to say what we should advance for that also.

The art of boring for water to immense depths we know is practised very much in the salt springs of the Western country, and I have understood that it is habitually practised in the Northern States generally for ordinary water. We have occasion for such an artist at our University, and myself and many individuals round about us would gladly employ one. If they abound with you I presume we could get one to come on and engage in the same line here. I believe he would find abundant employment; but should it be otherwise, or not to his mind, we could, by paying his expenses coming and returning, and placing him at home as we found him, save him from any loss by the experiment. Will you be so good as to make enquiry for such a person, to know the terms of his work, and communicate them to me, so that we may form a general idea of the cost of this method of supply. I could then give him immediate information of the probabilities and prospects here. I am anxious myself on behalf of the University, as well as the convenience it will afford to myself.

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Our University is going on well. The students have sensibly improved since the last year in habits of order and industry. Occasional instances of insubordination have obliged us from time to time to strengthen our regulations to meet new cases. But the most effectual instrument we have found to be the civil authority. The terrors of indictment, fine, imprisonment, binding to the good behavior, etc., have the most powerful effect. None have yet incurred them, but they have been sternly held up to their view. These civil coercions want a little accommodation to our organization, which we shall probably obtain, and I suppose the more easily as at the age of sixteen it is high time for youth to begin to learn and to practise the duties of obedience to the laws of their country. It will make an important item in the Syllabus of the Moral Professor, and be considered as forming a standing branch in the system of education established here. The competition among our hotel keepers has made them too obsequious to the will of the students. We must force them to become auxiliaries towards the preservation of order, rather than subservients to their irregularities. We shall continue under this evil until the renewal of their leases shall place them in our power, which takes place but annually. Our present number are over 170, and growing weekly; and on the opening of the Law School, which is fixed to the first of July, the dormitories now vacant will

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be all filled. These will accommodate 216, and several large houses are building in Charlottesville for private boarding, to meet the demand expected at the next commencement. Ever and affectionately yours.

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Vice-Presidents of Jefferson's Two Administrations

Aaron Burr (1756-1836) was born in Newark, N. J. He was the son of a New England clergyman and grandson of Jonathan Edwards. As early as 1775 he joined the army, his first enterprise being with Arnold in his expedition against Quebec. In 1776 he joined Washington's forces in the capacity of Major, but withdrew shortly to become an aide to General Putnam, then engaged in the defense of New York. He was a member of the New York Legislature in 1784 and 1798, and became Attorney-General of that State in 1789. From 1791 to 1797 he was one of the most prominent Anti-Federalist leaders in the Senate. In May, 1800, he was nominated with Jefferson for President. Each candidate received seventy-three votes and the choice was decided by Congress, which resulted in giving to Aaron Burr the office of Vice-President. He mortally wounded Alexander Hamilton in a duel on July 12, 1804, and the following year was supposed to have started the project of establishing a dynasty through a conjunction of Western territory of the United States with Mexico. For this alleged scission he was tried in 1807 at Richmond, but was acquitted after a long legal fight in which Jefferson was much concerned. For several years after this trial he lived in Europe. In 1812 he returned to New York to resume his law practice. By his first wife, the widow of General Augustine Prevost, he had a beautiful and accomplished daughter, Theodosia, who married General Joseph Allston, and perished at sea in 1812. At the age of seventy-eight, Aaron Burr married his second wife, Mme. Jumel. (*Reproduced from the Original Painting by James Sharpless, in Independence Hall, Philadelphia.*)

George Clinton (1739-1812) was born in Ulster County, New York. He practiced law with great success and became head of the Whig party in the Colonial Assembly of his native State. In 1775 he was elected to the Continental Congress, and voted for the Declaration of Independence, though his name does not appear signed to that instrument on account of his having been called away to take command of a brigade of New York militia. Chosen Governor of New York in 1777, he held the office by successive re-elections for eighteen years. In 1788 he was made President of the Convention called to consider the Federal Constitution, which he opposed, as he considered it gave too much power to the Central Government. Afterwards he became leader of the Republican faction in New York, and at the close of Washington's first term, in 1792, received fifty electoral votes for Vice-President. But it was not until 1804 that he was actually elected to that office, when Jefferson was re-elected to the Presidency. In 1808 he was again chosen for Vice-President under the first administration of James Madison. While officiating as President of the Senate (by virtue of his office as Vice-President) he gave the deciding vote against the recharter of the United States Bank in 1811. (*Reproduced from the Original Painting.*)

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AN ESSAY

Towards Facilitating Instruction

in the

ANGLO-SAXON

and

Modern Dialects of the English Language

For the Use of the University of Virginia.

BY

THOMAS JEFFERSON.

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INTRODUCTORY NOTE.—Jefferson's "Essay on Anglo-Saxon" is reproduced here for the first time since it was originally printed in 1851 by order of the Board of Trustees of the University of Virginia—twenty-five years after his death. Copies of this pamphlet are very rare, and the publication of the "Essay" in this volume is due to the courtesy of Dr. Charles W. Kent, who placed the copy belonging to the University of Virginia at the disposal of the editors of the present Edition of Jefferson's Writings. Jefferson sent his "Essay" to Herbert Croft, an eminent Englishman who was preparing an etymological dictionary, and the letter to him which precedes the "Essay" was no doubt intended to take the place of the customary preface. It may be of interest to note that Jefferson was one of the first, it not the pioneer, in this country to advocate the study of Anglo-Saxon and incorporate it in the college curriculum.

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TO HERBERT CROFT, ESQ., LL. B., LONDON.

MONTICELLO, October 30th, 1798.

SIR,—The copy of your printed letter on the English and German languages, which you have been so kind as to send me, has come to hand; and I pray you to accept of my thanks for this mark of your attention. I have perused it with singular pleasure, and, having long been sensible of the importance of a knowledge of the Northern languages to the understanding of English, I see it, in this letter, proved and specifically exemplified by your collations of the English and German. I shall look with impatience for the publication of your "English and German Dictionary." Johnson, besides the want of precision in his definitions, and of accurate distinction in passing from one shade of meaning to another of the same word, is most objectionable in his derivations. From a want probably of intimacy with our own language while in the Anglo-Saxon form and type, and of its kindred languages of the North, he has a constant leaning towards Greek and Latin for English etymon. Even

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Skinner has a little of this, who, when he has given the true Northern parentage of a word, often tells you from what Greek and Latin source it might be derived by those who have that kind of partiality. He is, however, on the whole, our best etymologist, unless we ascend a step higher to the Anglo-Saxon vocabulary; and he has set the good example of collating the English word with its kindred word in the several Northern dialects, which often assist in ascertaining its true meaning.

Your idea is an excellent one, in producing authorities for the meaning of words, "to select the prominent passages in our best writers, to make your dictionary a general index to English literature, and thus intersperse with verdure and flowers the barren deserts of Philology." And I believe with you that "wisdom, morality, religion, thus thrown down, as if without intention, before the reader, in quotations, may often produce more effect than the very passages in the books themselves."—"that the cowardly suicide, in search of a strong word for his dying letter, might light on a passage which would excite him to blush at his want of fortitude, and to forego his purpose;"—"and that a dictionary with examples at the words may, in regard to every branch of knowledge, produce more real effect than the whole collection of books which it quotes." I have sometimes myself used Johnson as a Repertory, to find favorite passages which I wished to recollect, but too rarely with success.

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I was led to set a due value on the study of the Northern languages, and especially of our Anglo-Saxon, while I was a student of the law, by being obliged to recur to that source for explanation of a multitude of law-terms. A preface to Fortescue on Monarchies, written by Fortescue Aland, and afterwards premised to his volume of Reports, develops the advantages to be derived to the English student generally, and particularly the student of law, from an acquaintance with the Anglo-Saxon; and mentions the books to which the learner may have recourse for acquiring the language. I accordingly devoted some time to its study, but my busy life has not permitted me to indulge in a pursuit to which I felt great attraction. While engaged in it, however, some ideas occurred for facilitating the study by simplifying its grammar, by reducing the infinite diversities of its unfixed orthography to single and settled forms, indicating at the same time the pronunciation of the word by its correspondence with the characters and powers of the English alphabet. Some of these ideas I noted at the time on the blank leaves of my Elstob's Anglo-Saxon Grammar: but there I have left them, and must leave them, unpursued, although I still think them sound and useful. Among the works which I proposed for the Anglo-Saxon student, you will find such literal and verbal translations of the Anglo-Saxon writers recommended, as you have given us of the German in your printed letter.

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Thinking that I cannot submit those ideas to a better judge than yourself, and that if you find them of any value you may put them to some use, either as hints in your dictionary, or in some other way, I will copy them as a sequel to this letter, and commit them without reserve to your better knowledge of the subject. Adding my sincere wishes for the speedy publication of your valuable dictionary, I tender you the assurance of my high respect and consideration.

THOMAS JEFFERSON.

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ESSAY ON THE ANGLO-SAXON LANGUAGE.

The importance of the Anglo-Saxon dialect toward a perfect understanding of the English language seems not to have been duly estimated by those charged with the education of youth; and yet it is unquestionably the basis of our present tongue. It was a full-formed language; its frame and construction, its declension of nouns and verbs, and its syntax were peculiar to the Northern languages, and fundamentally different from those of the South. It was the language of all England, properly so called, from the Saxon possession of that country in the sixth century to the time of Henry III. in the thirteenth, and was spoken pure and unmixed with any other. Although the Romans had been in possession of that country for nearly five centuries from the time of Julius Cæsar, yet it was a military possession chiefly, by their soldiery alone, and with dispositions intermutually jealous and unamicable. They seemed to have aimed at no lasting settlements there, and to have had little familiar mixture with the native Britons. In this state of connection there would probably be little incorporation of the Roman into the native lan-

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guage, and on their subsequent evacuation of the island its traces would soon be lost altogether. And had it been otherwise, these innovations would have been carried with the natives themselves when driven into Wales by the invasion and entire occupation of the rest of the Southern portion of the island by the Anglo-Saxons.

The language of these last became that of the country from that time forth, for nearly seven centuries; and so little attention was paid among them to the Latin, that it was known to a few individuals only as a matter of science, and without any chance of transfusion into the vulgar language. We may safely repeat the affirmation, therefore, that the pure Anglo-Saxon constitutes at this day the basis of our language. That it was sufficiently copious for the purposes of society in the existing condition of arts and manners, reason alone would satisfy us from the necessity of the case. Its copiousness, too, was much favored by the latitude it allowed of combining primitive words so as to produce any modification of idea desired. In this characteristic it was equal to the Greek, but it is more especially proved by the actual fact of the books they have left us in the various branches of history, geography, religion, law, and poetry. And although since the Norman conquest it has received vast additions and embellishments from the Latin, Greek, French, and Italian languages, yet these are but engraftments on its idiomatic stem; its original structure

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and syntax remain the same, and can be but imperfectly understood by the mere Latin scholar. Hence the necessity of making the Anglo-Saxon a regular branch of academic education. In the sixteenth and seventeenth centuries it was assiduously cultivated by a host of learned men. The names of Lambard, Parker, Spelman, Wheeloc, Wilkins, Gibson, Hickes, Thwaites, Somner, Benson, Mareschal, Elstob, deserve to be ever remembered with gratitude for the Anglo-Saxon works which they have given us through the press, the only certain means of preserving and promulgating them. For a century past this study has been too much neglected. The reason of this neglect, and its remedy, shall be the subject of some explanatory observations. These will respect—I. The Alphabet. II. Orthography. III. Pronunciation. IV. Grammar.

I. The Alphabet.

The Anglo-Saxon alphabet, as known to us in its printed forms, consists of twenty-six characters, about the half of which are Roman, the others of forms peculiarly Saxon. These, mixed with the others, give an aspect to the whole rugged, uncouth, and appalling to an eye accustomed to the roundness and symmetry of the Roman character. This is a first discouragement to the English student. Next, the task of learning a new alphabet, and the time and application necessary to render it easy and

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familiar to the reader, often decides the doubting learner against an enterprise so apparently irksome.

The earliest remains extant of Saxon writing are said to be of the seventh century; and the latest of the thirteenth. The black letter seems to have been introduced by William the Conqueror, whose laws are written in Norman French, and in that letter. The full alphabet of Roman characters was first used about the beginning of the sixteenth century. But the expression of the same sounds, by a different character did not change these sounds, nor the language which they constituted; did not make the language of Alfred a different one from that of Piers Ploughman, of Chaucer, Douglas, Spenser, and Shakespeare, any more than the second revolution, which substituted the Roman for the English black letter, made theirs a different language from that of Pope and Bolingbroke; or the writings of Shakespeare, printed in black letter, different from the same as now done in Roman type. The life of Alfred, written in Latin and in Roman character by Asser, was reprinted by Archbishop Parker in Anglo-Saxon letters. But it is Latin still, although the words are represented by characters different from those of Asser's original. And the extracts given us by Dr. Hickes from the Greek Septuagint, in Anglo-Saxon characters, are Greek still, although the Greek sounds are represented by other types. Here then I ask, why should not this Roman character, with which we are all familiar,

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be substituted now for the Anglo-Saxon, by printing in the former the works already edited in the latter type? and also the manuscripts still inedited? This may be done letter for letter, and would remove entirely the first discouraging obstacle to the general study of the Anglo-Saxon.

II. Orthography.

In the period during which the Anglo-Saxon alphabet was in use, reading and writing were rare arts. The highest dignitaries of the church subscribed their marks, not knowing how to write their names. Alfred himself was taught to read in his thirty-sixth year only, or, as some editions of Asser say, in his thirty-ninth. Speaking of learning in his Preface to the Pastoral of Gregory, Alfred says, "Swa clean hi was oth-fallen on Angelkin that swithe few were on behinan Humber the hior thenung cuthon understandan on Englisc, oth furthon an errand y-write of Latin on Englisc areckon. And I ween that not many beyondan Humber nay aren; swa few hior weron that I furthon ane on lepne nay may y-thinkan be-Suthan Thames tha tha I to ric fang." Or, as literally translated into later English by Archbishop Parker, "So clean was it fallen amongst the English nation, that very few were on this side Humber which their service could understand in English, or else furthermore an epistle from Latin into English to declare.

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And I ween that not many beyond Humber were not. So few of them were that I also one only may not remember by South Tamise when as I to reign undertook." In this benighted state, so profoundly illiterate, few read at all, and fewer wrote: and the writer having no examples of orthography to recur to, thinking them indeed not important, had for his guide his own ideas only of the power of the letters, unpractised and indistinct as they might be. He brought together, therefore, those letters which he supposed must enter into the composition of the sound he meant to express, and was not even particular in arranging them in the order in which the sounds composing the word followed each other. Thus, *birds* was spelt brides; *grass*, gaers; *run*, yrnan; *cart*, crætt; *fresh*, fersh. They seemed to suppose, too, that a final vowel was necessary to give sound to the consonant preceding it, and they used for that purpose any vowel indifferently. A *son* was suna, sune, sunu; *mæra*, mære, mæro, mæru; *fines*, limites; *ge*, *ye*, *y*, *i*, are various spellings of the same prefix. The final *e* mute in English is a remain of this, as in *give*, *love*, *curse*.

The vowels were used indiscriminately also for every vowel sound. Thus,

The comparative ended in *ar*, *er*, *ir*, *or*, *ur*, *yr*.
The superlative ended in *ast*, *est*, *ist*, *ost*, *ust*, *yst*.
The participle present ended in *and*, *end*, *ind*, *ond*, *und*, *ynd*.
The participle past ended in *ad*, *ed*, *id*, *od*, *ud*, *yd*.
Other examples are, betweox, betwix, betwox, betwux. betwyx, for *betwixt*; egland, igland, ygland, for *island*.

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Of this promiscuous use of the vowels we have also abundant remains still in English. For according to the powers given to our letters we often use them indifferently for the same sound, as in *bulwark*, *assert*, *stir*, *work*, *lurk*, *myrtle*. The single word *many*, in Anglo-Saxon, was spelt, as Dr. Hickes has observed, in twenty different ways; to wit, mænigeo, mænio, mæniu, menio, meniu, mænigo, mænego, manige, menigo, manegeo, mænegeo, menegeo, mænygeo, menigeo, manegu, mænigu, menegu, menego, menigu, manigo. To prove, indeed, that every one spelt according to his own notions, without regard to any standard, we have only to compare different editions of the same composition. Take, for example, Alfred's Preface to Gregory's Pastoral before cited, as published in different editions:

Swa	clæne	hio	wæs	othfeallenu	on	angelkynne	thætte	swythe	feawe
		heo		othfeallen		angelcynne	that		feawa
									fewa

wæron	behionan	Humbre	the	hiora	thenunga	cuthen	understandan	on	Englisc
	beheonan			hira	theninga	cuthon	understondan		Ænglisc
					thenunge				

oththe	furthum	an	ærendgewrit	of	Lædene	on	Englisc	areccan & ic wene
	furthon		ærendgewryt		Ledene		Ænglisc	areccean

thætte	nauht	monige	begeondan	Humbre	næren.
that	noht		begiondan		nearon.
	naht				næron.

This unsettled orthography renders it necessary to swell the volume of the dictionaries, by giving to each word as many places in order of the alphabet

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as there are different modes of spelling it; and in proportion as this is omitted, the difficulty of finding the words increases on the student.

Since, then, it is apparent that the Anglo-Saxon writers had established no particular standard of orthography, but each followed arbitrarily his own mode of combining the letters, we are surely at liberty equally to adopt any mode which, establishing uniformity, may be more consonant with the power of the letters, and with the orthography of the present dialect, as established by usage. The latter attention has the advantage of exhibiting more evidently the legitimate parentage of the two dialects.

III. Pronunciation.

To determine what that was among the Anglo-Saxons, our means are as defective as to determine the long-agitated question what was the original pronunciation of the Greek and Latin languages. The presumption is certainly strong that in Greece and Italy, the countries occupied by those languages, their pronunciation has been handed down, by tradition, more nearly than it can be known to other countries: and the rather, as there has been no particular point of time at which those ancient languages were changed into the modern ones occupying the same grounds. They have been gradually worn down to their present forms by time, and changes of modes and circumstances. In like

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manner there has been no particular point of time at which the Anglo-Saxon has been changed into its present English form. The languages of Europe have generally, in like manner, undergone a gradual metamorphosis, some of them in name as well as in form. We should presume, therefore, that in those countries of Great Britain which were occupied earliest, longest, and latest by the Saxon immigrants, the pronunciation of their language has been handed down more nearly than elsewhere; and should be searched for in the provincial dialects of those countries. But the fact is, that these countries have divaricated in their dialects, so that it would be difficult to decide among them which is the most genuine. Under these doubts, therefore, we may as well take the pronunciation now in general use as the legitimate standard, and that form which it is most promotive of our object to infer the Anglo-Saxon pronunciation. It is, indeed, the forlorn hope of all aim at their probable pronunciation; for were we to regard the powers of the letters only, no human organ could articulate their uncouth jumble. We will suppose, therefore, the power of the letters to have been generally the same in Anglo-Saxon as now in English; and to produce the same sounds we will combine them, as nearly as may be, conformably with the present English orthography. This is, indeed, a most irregular and equivocal standard; but a conformity with it will bring the two dialects nearer together in sound and semblance,

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and facilitate the transition from the one to the other more auspiciously than a rigorous adherence to any uniform system of orthography which speculation might suggest.

I will state some instances only (referring to Dr. Hickes for more) of the unskilful and inconsistent uses of the letters by the Anglo-Saxons, in proof of the necessity of changing them, to produce, to a modern reader, the very sounds which we suppose them to have intended by their confused combinations. Their vowels, promiscuously used, as before observed, must all be freely changed to those used in corresponding words in English orthography.

b sounds as *v*, as in ober, *over*.
c " *g*, " fic, *fig*.
c " *j*, " ceole, *jowl*.
c " *k*, " tacn, *token;* bacen, *baked;* cind, *kind*.
c " *s*, " cedar, *cedar*.
c " *ch*, " ceak, *cheek*.
cg " *dge*, " bricg, *bridge*.
d " *th*, " worden, or worthen; mid or mith, *with*
f " *v*, " delfan, *to delve;* yfel, *evil*.
v " *f*, " vot, *foot*.
g " *c*, " gamel, *camel*.
g " *ga*, " gandra, *gander;* garlec, *garlic*
g " *ge*, " angel.
g " *w*, " laga, *law;* agen, *own;* fugel, *fowl*.
g " *y*. This is its most general power, as ge, *ye;* gear, *year;* burigan, *bury;* geoc, *yoke;* ego, *eye;* ge, *ye*, *y*.
sc " *sh*, as in scame, *shame;* scip, *ship;* score, *shore;* scyl, *shall*.
y " *ou*, as in ynce, *ounce*.
x " *sh*, as in fixas, *fishes;* axan, *ashes*.
x " *sk*, as in axian, *ask*.

And finally, in the words of Dr. Hickes, "Demum quomodo Anglo-Saxon icae voces factae sunt Angli-

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cae mutando literas ejusdem organi, asperando lenes, et leniendo asperas, vocales, diphongos, et interdum consonantes leviter mutando, auferendo initiales et finales syllabas, præsertim terminationem modi infinitivi, præterea addendo, transponendo, et interponendo literas, et voces quoque syncopando, exemplis docendum est."

IV. Grammar.

Some observations on Anglo-Saxon grammar may show how much easier that also may be rendered to the English student. Dr. Hickes may certainly be considered as the father of this branch of modern learning. He has been the great restorer of the Anglo-Saxon dialect from the oblivion into which it was fast falling. His labors in it were great, and his learning not less than his labors. His grammar may be said to be the only one we yet possess: for that edited at Oxford in 1711 is but an extract from Hickes, and the principal merit of Mrs. Elstob's is, that it is written in English, without anything original in it. Some others have been written, taken also, and almost entirely from Hickes. In his time there was too exclusive a prejudice in favor of the Greek and Latin languages. They were considered as the standards of perfection, and the endeavor generally was to force other languages to a conformity with these models. But nothing can be more radically unlike than the frames of the

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ancient languages, Southern and Northern, of the Greek and Latin languages, from those of the Gothic family. Of this last are the Anglo-Saxon and English; and had Dr. Hickes, instead of keeping his eye fixed on the Greek and Latin languages, as his standard, viewed the Anglo-Saxon in its conformity with the English only, he would greatly have enlarged the advantages for which we are already so much indebted to him. His labors, however, have advanced us so far on the right road, and a correct pursuit of it will be a just homage to him.

A noun is to be considered under its accidents of genders, cases, and numbers. The word gender is, in nature, synonymous with sex. To all the subjects of the animal kingdom nature has given sex, and that is twofold only, male or female, masculine or feminine. Vegetable and mineral subjects have no distinction of sex, consequently are of no gender. Words, like other inanimate things, have no sex, are of no gender. Yet in the construction of the Greek and Latin languages, and of the modern ones of the same family, their adjectives being varied in termination, and made distinctive of animal sex, in conformity with the nouns or names of animal subjects, the two real genders, which nature has established, are distinguished in these languages. But, not stopping here, they have by usage, thrown a number of unsexual subjects into the sexual classes, leaving the residuary mass to a third class, which grammarians call neutral—that is to say, of no

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gender or sex: and some Latin grammarians have so far lost sight of the real and natural genders as to ascribe to that language seven genders, the masculine, feminine, neuter, gender common to two, common to three, the doubtful, and the epicene; than which nothing can be more arbitrary, and nothing more useless. But the language of the Anglo-Saxons and English is based on principles totally different from those of the Greek and Latin, and is constructed on laws peculiar and idiomatic to itself. Its adjectives have no changes of termination on account of gender, number or case. Each has a single one applicable to every noun, whether it be the name of a thing having sex, or not. To ascribe gender to nouns in such a case would be to embarrass the learner with unmeaning and useless distinctions.

It will be said, *e. g.*, that a priest is of one gender, and a priestess of another; a poet of one, a poetess of another, etc.; and that therefore the words designating them must be of different genders. I say, not at all; because although the thing designated may have sex, the word designating it, like other inanimate things, has no sex, no gender. In Latin, we well know that the thing may be of one gender and the word designating it of another. See Martial vii., Epig. 17. The ascription of gender to it is artificial and arbitrary, and, in English and Anglo-Saxon, absolutely useless. Lowthe, therefore, among the most correct of our English grammarians, has

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justly said that in the nouns of the English language there is no other distinction of gender but that of nature, its adjectives admitting no change but of the degrees of comparison. We must guard against the conclusion of Dr. Hickes that the change of termination in the Anglo-Saxon adjectives, as god, gode, for example, is an indication of gender; this, like others of his examples of inflection, is only an instance of unsettled orthography. In the languages acknowledged to ascribe genders to their words, as Greek, Latin, Italian, Spanish, French, their dictionaries indicate the gender of every noun; but the Anglo-Saxon and English dictionaries give no such indication; a proof of the general sense that gender makes no part of the character of the noun. We may safely therefore dismiss the learning of genders from our language, whether in its ancient or modern form.

2. Our law of Cases is different. They exist in nature, according to the difference of accident they announce. No language can be without them, and it is an error to say that the Greek is without an ablative. Its ablative indeed is always like its dative; but were that sufficient to deny its existence, we might equally say that the Latins had no ablative plural, because in all nouns of every declension, their ablative plural is the same with the dative. It would be to say that to go *to* a place, or *from* a place, means the same thing. The grammarians of Port-Royal, therefore, have justly restored the abla-

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tive to Greek nouns. Our cases are generally distinguished by the aid of the prepositions *of*, *to*, *by*, *from*, or *with*, but sometimes also by change of termination. But these changes are not so general or difficult as to require, or to be capable of a distribution into declensions. Yet Dr. Hickes, having in view the Saxon declensions of the Latin, and ten of the Greek language, has given six, and Thwaytes seven to the Anglo-Saxon. The whole of them, however, are comprehended under the three simple canons following:

(1.) The datives and ablatives plural of all nouns end in *um*.

(2.) Of the other cases, some nouns inflect their genitive singular only, and some their nominative, accusative and vocative plural also in *s*, as in English.

(3.) Others, preserving the primitive form in their nominative and vocative singular, inflect all the other cases and numbers in *en*.

3. Numbers. Every language, as I presume, has so formed its nouns and verbs as to distinguish a single and a plurality of subjects, and all, as far as I know, have been contented with the simple distinction of singular and plural, except the Greeks, who have interposed between them a dual number, so distinctly formed by actual changes of termination and inflection, as to leave no doubt of its real distinction from the other numbers. But they do not uniformly use their dual for its appropriate purpose.

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The number two is often expressed plurally, and sometimes by a dual noun and plural verb. Dr. Hickes supposes the Anglo-Saxon to have a dual number also, not going through the whole vocabulary of nouns and verbs, as in Greek, but confined to two particular pronouns, *i. e.*, *wit* and *yit*, which he translates we two, and ye two. But Benson renders *wit* by *nos*, and does not give *yit* at all. And is it worth while to embarrass grammar with an extra distinction for two or three, or half a dozen words? And why may not *wit*, we two, and *yit*, ye two, be considered plural, as well as we three, or we four? as duo, ambo, with the Latins? We may surely say then that neither the Anglo-Saxon nor English have a dual number.

4. Verbs, moods. To the verbs in Anglo-Saxon Dr. Hickes gives six moods. The Greeks, besides the four general moods, Indicative, Subjunctive, Imperative, and Infinitive, have really on Optative mood, distinguished from the others by actual differences of termination. And some Latin grammarians, besides the Optative, have added, in that language, a Potential mood; neither of them distinguished by differences of termination or inflection. They have therefore been disallowed by later and sounder grammarians; and we may, in like manner, disembarrass our Anglo-Saxon and English from the Optatives and Potentials of Dr. Hickes.

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Supines and Gerunds.

He thinks, too, that the Anglo-Saxon has supines and gerunds among its variations; accidents certainly peculiar to Latin verbs only. He considers *lufian*, to love, as the infinitive, and *to lufian*, a supine. The exclusion, therefore, of the preposition *to*, makes with him the infinitive, while we have ever considered it as the essential sign of that mood. And what all grammarians have hitherto called the infinitive, he considers as a supine or gerund. His examples are given in Anglo-Saxon and Latin, but I will add the equivalent Greek and English for illustration:

1 MARK, 24:—Come thu us to for-spillan?
Venisti nos *perditum*?
Ἦλθες ἀπολεσαι ἡμας;
Comest thou to destroy us?

9 LUKE, 1:—And he him an-wield sealed untrimness to healan, and devil-sickness ut to a-drivan.
Potestatem *curandi* infirmitates, et *ejiciendi* dæmonia.
ἐξουσιαν ἐπι παντα τὰ δαιμόνια καὶ νοσμος θεράπευειν
Authority over all demons, and to cure diseases.

2 MATT., 13:—Herod seeketh that child to for-spillan.
Herodes quærit puerum ad *perdendum* eum.
Ἡροδης ζητειν τὸ παιδιον τομ ἀπολέσαι αὐτο
Herod seeketh the child to destroy him.

1 LUKE, 77:—To sellen his folc hæle y-wit.
Ad dandam scientiam salutis plebi suæ.
τομ θοῦναι γνῶσιν σωτέριας τω λαῶ αὐτου.
To give knowledge of salvation to his people.

I ask then if ἀπολέσαι, θεράπευειν, θοῦναι, are supines or gerunds? Why then should to for-spillan, to healan,

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to a-drivan, to sellen, or, to destroy, to heal, to cure, to drive, to give, be necessarily supines or gerunds? The fact is only that the Latins express by these inflections, peculiar to themselves, what other languages do by their infinitives.

From these aberrations, into which our great Anglo-Saxon leader, Dr. Hickes, has been seduced by too much regard to the structure of the Greek and Latin languages and too little to their radical difference from that of the Gothic family, we have to recall our footsteps into the right way, and we shall find our path rendered smoother, plainer, and more direct to the object of profiting of the light which each dialect throws on the other. And this, even as to the English language, appears to have been the opinion of Wallis, the best of our English grammarians, who, in the preface to his English grammar, says: "Omnes ad Latinæ linguæ normam hanc nostram Anglicanam nimium exigentes multa inutilia, præcepta de nominum casibus, generibus et declinationibus, atque verborum temporibus, modis et conjugationibus, de nominum item et verborum regimine, aliisque similibus tradiderunt, quæ a lingua nostra sunt prorsus aliena, adeoque confusionem potius et obscuritatem pariunt, quam explicationi inserviunt?"

Having removed, then, this cumbrous scaffolding, erected by too much learning, and obscuring instead of enlightening our Anglo-Saxon structure, I will proceed to give a specimen of the manner in which

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I think might be advantageously edited any future republications of the Anglo-Saxon writings which we already possess in print, or any manuscripts which may hereafter be given to us through the medium of the press.

I take my specimen from Thwaites' Heptateuch, beginning with the 1st Chapter of Genesis. I give in one column the Anglo-Saxon text, in the Anglo-Saxon character, preserving letter for letter, the orthography of the Saxon original; in another column the same text in the Anglo-Saxon character also, spelt with a combined regard to the power of the letters, to English orthography and English pronunciation. I interline a version verbally exact, placing every English word against its Anglo-Saxon root, without regard to the change of acceptation it has undergone in time; as *e. g.*, "the earth was *idle* and empty," I Gen. 2, instead of the modern words "without form and void," and the "ἀοράτος καὶ ἀκατασκεύαστος" of the LXX., leaving the ingenuity of the reader to trace the history of the change. In rendering the Anglo-Saxon into the corresponding English word, I have considered as English not only what is found in the oldest English writers, in glossaries and dictionaries, but in the Provincial dialects also, and in common parlance of unlettered people, who have preserved more of the ancient language than those whose style has been polished by education. Grammar, too, is disregarded, my principal object being to manifest the identity of the

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two languages. This version is rendered more uncouth by the circumstances that 1. The ordo verborum of the Anglo-Saxon is not exactly the same as the English. 2. They used much oftener the noun without the article. 3. They frequently use their oblique cases without a preposition prefixed the English very rarely. In this verbal version these omissions are to be understood.

The Anglo-Saxon writings, in this familiar form, are evidently nothing but old English; and we may join conscientiously in the exhortation of Archbishop Parker, in his preface to Asser, "Omnes qui in regni institutis addiscendis, elaboraverint, cohortabor ut *exiguo labore, seu pene nullo*, hujus sibi linguæ cognitionem acquirant?"

As we are possessed in America of the printed editions of the Anglo-Saxon writings, they furnish a fit occasion for this country to make some return to the older nations for the science for which we are indebted to them; and in this task I hope an honorable part will in time be borne by our University, for which, at an hour of life too late for anything elaborate, I hazard these imperfect hints, for consideration chiefly on a subject on which I pretend not to be profound. The publication of the inedited manuscripts which exist in the libraries of Great Britain only, must depend on the learned of that nation. Their means of science are great. They have done much, and much is yet expected from them. Nor will they disappoint us. Our means are

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as yet small; but the widow's mite was piously given and kindly accepted. How much would contribute to the happiness of these two nations a brotherly emulation in doing good to each other, rather than the mutual vituperations so unwisely and unjustifiably sometimes indulged in by both. And this too by men on both sides of the water, who think themselves of a superior order of understanding, and some of whom are truly of an elevation far above the ordinary stature of the human mind. No two people on earth can so much help or hurt each other. Let us then yoke ourselves jointly to the same car of mutual happiness, and vie in common efforts to do each other all the good we can—to reflect on each other the lights of mutual science particularly, and the kind affections of kindred blood. Be it our task, in the case under consideration, to reform and republish, in forms more advantageous, what we already possess, and theirs to add to the common stock the inedited treasures which have been too long buried in their depositories.

P.S. January, 1825. In the year 1818, by authority of the legislature of Virginia, a plan for the establishment of an University was prepared and proposed by them. In that plan the Anglo-Saxon language was comprehended as a part of the circle of instruction to be given to the students; and the preceding pages were then committed to writing for the use of the University. I pretend not to be an Anglo-Saxon scholar. From an early period of

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my studies, indeed, I have been sensible of the importance of making it a part of the regular education of our youth; and at different times, as leisure permitted, I applied myself to the study of it, with some degree of attention. But my life has been too busy in pursuits of another character to have made much proficiency in this. The leading idea which very soon impressed itself on my mind, and which has continued to prevail through the whole of my observations on the language, was, that it was nothing more than the Old English of a period of some ages earlier than that of Piers Ploughman; and under this view my cultivation of it has been continued. It was apparent to me that the labors of Dr. Hickes, and other very learned men, have been employed in a very unfortunate direction, in endeavors to give it the complicated structure of the Greek and Latin languages. I have just now received a copy of a new work, by Mr. Bosworth, on the elements of Anglo-Saxon grammar, and it quotes two other works, by Turner and Jamieson, both of great erudition, but not yet known here.

Mr. Bosworth's is, indeed, a treasure of that venerable learning. It proves the assiduity with which he has cultivated it, the profound knowledge in it which he has attained, and that he has advanced far beyond all former grammarians in the science of its structure. Yet, I own, I was disappointed on finding that in proportion as he has advanced on and beyond the footsteps of his predecessors, he

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has the more embarrassed the language with rules and distinctions, in imitation of the grammars of Greek and Latin; has led it still further from its genuine type of old English, and increased its difficulties by the multitude and variety of new and minute rules with which he has charged it. I had the less expected this from observations made early in the work, on "the total disregard of the Anglo-Saxons of any settled rules of orthography, their confounding the letters, using them indifferently for each other, and especially the vowels and diphthongs (p. 46), on the frequent transpositions of their letters, and the variety of ways of writing the same word by different Anglo-Saxon authors;" giving as examples, six ways of spelling the word "youth," and twenty ways of spelling "many;" observing that, in the comparative degree, the last syllable, *er*, was spelt with all the vowels indifferently; so also the syllable *est*, of the superlative degree, and so the participial terminations of *end* and *ed* (p. 54); adding many other examples of a use entirely promiscuous of the vowels, and much so of the consonants.

And in page 249 he says: "It must be evident that learning was not so common in the Saxon era as at the present time. Our ancestors, having few opportunities of literary acquirements, could not have determined upon fixed rules for orthography, any more than illiterate persons in the present day, who, having been employed in manual labor, could

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avail themselves of the facilities which were offered. Hence arose the differences observable in spelling the same words in Saxon." And again, in a note, p. 253, he says: "Those changes in Saxon, which are denominated dialects, appear in reality only to be the alterations observed in the progress of the language, as it gradually flowed from the Saxon, varying, or casting off many of its inflections, till it settled in the form of the present English. This progressive transformation of the Anglo-Saxon into our present form of speech will be evident by the following examples, taken from the translations of the most learned men of the age to which they are referred." And he proceeds to give specimens of the Paternosters of the years 890, 930, 1130, 1160, 1180, 1250, 1260, 1380, 1430, 1500, 1526, 1537, 1541, 1556, 1611, that is, from the time of Alfred to that of Shakespeare. These obviously prove the gradual changes of the language from the Anglo-Saxon form to that of the present English, and that there was no particular point of time at which the Anglo-Saxon was superseded by the English dialect; for dialects we may truly call them, of the same language, separated by lines of time instead of space. And these specimens prove also that the language of Alfred was, no more than that of Piers Ploughman, a different one from that we now speak.

In like manner, the language of France, cotemporary with our Anglo-Saxon, was as different from modern French, as the Anglo-Saxon from modern

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English; and their Romanum-rusticum, or Romain-rustique, as it was called, has changed insensibly, as our Anglo-Saxon, to the form now spoken. Yet so much of the fundamental idiom remains the same in both, that to read and understand the elder dialect, they need but a glossary for words lost by disuse.

I will make one more quotation from Mr. Bosworth, because it confirms what I have said of the scholastic bias of our early authors to place our old language in the line of Latin and Greek. "Hickes," says he, page 213, note 2, "indisputably one of the most learned of those who can be said to have examined, with a critical eye, our Saxon literature, influenced by the desire of reducing everything to some classical standard, a prejudice not uncommon in the age in which he wrote, endeavors, with greater zeal than success, to show that the writers whom he was recommending to the world [the Anglo-Saxon poets] observed the legitimate rules of Latin prosody, and measured their feet by syllabic quantity."

Notwithstanding these proofs that our author was fully aware of the unsettled and uncertain orthography of the Anglo-Saxons, and his particular observations, p. 53, 54, that "the final letters of words are often omitted," and "that the different letters suffer very frequent changes of position," he proceeds, in conformity with preceding authorities, which indeed support him, to make genders, cases, and declensions of nouns to depend on their termi-

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nating vowel, p. 80, 81, 82, 83, 94; the formations of different parts of verbs to depend on the collocation of the letters [p. 143], and other formations [p. 181] and even regimen [p. 202] to depend on the final syllable. And this leads to such an infinitude of minute rules and observances, as are beyond the power of any human memory to retain. If, indeed, this be the true genius of the Anglo-Saxon language, then its difficulties go beyond its worth, and render a knowledge of it no longer a compensation for the time and labor its acquisition will require; and, in that case, I would recommend its abandonment in our University, as an unattainable and unprofitable pursuit.

But if, as I believe, we may consider it as merely an antiquated form of our present language, if we may throw aside the learned difficulties which mask its real character, liberate it from these foreign shackles, and proceed to apply ourselves to it with little more preparation than to Piers Ploughman, Douglas, or Chaucer, then I am persuaded its acquisition will require little time or labor, and will richly repay us by the intimate insight it will give us into the genuine structure, powers and meanings of the language we now read and speak. We shall then read Shakespeare and Milton with a superior degree of intelligence and delight, heightened by the new and delicate shades of meaning developed to us by a knowledge of the original sense of the same words.

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This rejection of the learned labors of our Anglo-Saxon doctors, may be considered, perhaps, as a rebellion against science. My hope, however, is, that it may prove a revolution. Two great works, indeed, will be wanting to effect all its advantages. 1. A grammar on the simple principles of the English grammar, analogizing the idiom, the rules and principles of the one and the other, eliciting their common origin, the identity of their structure, laws and composition, and their total unlikeness to the genius of the Greek and Latin. 2. A dictionary, on the plan of Stephens or Scapula, in which the Anglo-Saxon roots should be arranged alphabetically, and the derivatives from each root, Saxon and English, entered under it in their proper order and connection. Such works as these, with new editions of the Saxon writings, on the plan I venture to propose, would show that the Anglo-Saxon is really old English, little more difficult to understand than works we possess, and read, and still call English. They would recruit and renovate the vigor of the English language, too much impaired by the neglect of its ancient constitution and dialects, and would remove, for the student, the principal difficulties of ascending to the source of the English language, the main object of what has been here proposed.

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Observations on Anglo-Saxon Grammar.

Pronunciation.—Different nations use different alphabets for expressing the sounds of their languages; and nations which use the same alphabet assign very different powers to the same characters. Hence, to enable persons to learn the language of other countries, grammars are composed explaining to what letters and combinations of them, in their own language, the letters and combinations of them in another are equivalent. The pronunciation of the living languages is deposited in records of this kind, as doubtless was that of the Greek and Latin languages, now considered as dead. These evidences of their pronunciation, however, being lost, we resort to the countries in which these languages were once spoken, and where they have been insensibly altered to what is now spoken there; and we presume that, the same alphabetical characters being still preserved there, the powers assigned to them are those handed down by tradition, with some changes, no doubt, but yet tolerably correct in the main: and that the present pronunciation of those characters by the inhabitants of the same country is better evidence of their ancient power than any other to be obtained at this day. Hence it is presumed that the pronunciation of the Greek and Roman characters, now practiced by the modern Greeks and Italians, is nearer probably to that of the ancient Greeks and Romans than the

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sounds assigned to the same characters by any other nation.

The Anglo-Saxon is also become a dead language. Its alphabet is preserved; but if any written evidences exist of the powers assigned to its different characters, it is unknown to me. On the contrary, I believe that the expressions of the sounds of their language by alphabetical characters had not been long and generally enough practised to settle an uniform power in each letter or combination of letters. This I infer from their infinitely diversified modes of spelling the same word. For example, the word *many* is found spelt in twenty different manners. To supply evidence, therefore, of the pronunciation of their words, we should, I think, resort to the pronunciation of the corresponding words in modern English. For as the Anglo-Saxon was insensibly changed into the present English language, it is probable the English have the pronunciation, as well as the words, by tradition. Indeed, I consider the actual pronunciation of a word by the English as better evidence of its pronunciation by their Anglo-Saxon ancestors than the multiform representation of it by letters which they have left us. The following examples will give an idea of the appeal I make to English pronunciation for the power of the Saxon letters, and sound of the Saxon words:

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The Anglo-Saxon .c in cy. cynic was probably sounded as *k* in the corresponding English words *kine, kingric.*

ci. in cierce = ch, in chest.
eo. in eop, eopep = yo, in you, your.
" in þreo, seofon = e, in three, seven.
" in feopep = o, in four.
ea. in anfeald, tŷfeald = a, or o, in onefold, twofold.
ge. prefix = y, in yclept, or a. in adown, along, aside, among, about, etc.
io. in fioc, fiolc, fiolfor = i, in sick, silk, silver.
sc in biscop, judeisc, scomleare = sh, in bishop, Jewish, shameless.

Those, I think, who have leisure and knowledge of the subject, could not render it a greater service than by new editions of the Saxon writings still extant, digested under four columns, whereof the first should present the text in the Saxon character and original loose orthograhy; the second the same text in Saxon characters reformed to modern English orthography as nearly as allowable; the third, the same text in the English character and orthography; the fourth, an English version, as literally expressed, both as to words and their arrangement, as any indulgences of grammar or of obsolete or provincial terms, would tolerate. I will exhibit the following passage from Alfred's Orosius, I. i., p. 23, as a specimen:

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1. Saxon Orthography.	2. Saxon Orthography reformed.	3. English Character and Orthography.	4. English Literal Version.
he þæſ mid þæm ƒẏṙſt- -um mannum on þæm lande. *næƒde he þeah ma þonne tþen- tiȝ hṙẏðeṙa ⁊ tþen- tiȝ ſceapa. ⁊ tþentiȝ ſþẏna. ⁊ þat lẏtle þat he eṙede. he eṙede mid hoṙſan. ac hẏṙa aṙ iſ mæſt on þæm ȝaƒol þe þa Finnaſ him ȝẏldað. þæt ȝa- ƒol bið on deoṙa ƒel- -lum. ⁊ on Fuȝela ƒe- ðeṙum. ⁊ hþaleſ bane. ⁊ on þæm ſcip- -ṙapum þe beoð oƒ hþæleſ hẏde ȝeṙoþht ⁊ oƒ ſeoleſ :. Æȝh- -þilc ȝẏlt be hẏſ ȝe- -bẏṙdum. ſe bẏṙdeſ- ta ſceal ȝẏldan ƒiƒtẏne meaṙðeſ ƒell. ⁊ ƒiƒ hṙaneſ. ⁊ an beṙan ƒel. ⁊ tẏn ambṙa ƒeðṙa. ⁊ be- -ṙenne kẏṙtel oðde ẏteṙenne. ⁊ tþeȝen ſcipṙapaſ. æȝþeṙ ſẏ ſẏxtiȝ elne lanȝ. oþeṙ ſẏ oƒ hþæleſ hẏde ȝeþoṙht. oþeṙ oƒ ſioleſ :.	he þaſ miþ þem ƒiṙſt- -um mannum in þem land. naƒd he þo ma þen tþen- tẏ hṙẏðeṙa. ⁊ tþen- ty ſceep. ⁊ tþenty ſþine. ⁊ þat little þat he eaṙed he eaṙed miþ hoṙſen. ac hẏṙ aṙ iſ moſt on þem ȝavel þa þe Finneſ him ẏieldeð. þat ȝa- -vel beeð on deeṙ ƒel- -lum. ⁊ on Foþl ƒe- þeṙum. ⁊ þhaleſ bone. ⁊ on þem ſhip- -ṙopum þe beeð oƒ þhaleſ hide yþṙoȝht. ⁊ oƒ ſealſ. ay- -þhile yield bẏ hiſ y- biṙðum. ſe biṙðeſt ſhall yielden ƒiƒteen maṙtſ ƒell. ⁊ ƒive ṙaineſ. ⁊ an beaṙen ƒell. ⁊ ten hampeṙa ƒeaþeṙa. ⁊ beaṙen kiṙtle oþ otteṙen. ⁊ tþain ſhipṙoþeſ. eiþeṙ ſi ſixty ellen lonȝ. oþeṙ ſi oƒ þhaleſ hide yþṙoȝht oþeṙ oƒ ſealſ.	he (other) was mid them first- -um mannum in them land. nhaved he tho ma then twen- -ty hryther, & twen- -ty sheep, & twenty swine. & that little that he eared, he eared mith horsen, ac hir ar is most in them gavel tha the Fins him yieldeth. that ga- -vel beeth in deer fel- -lum, & in fowl-fea- -therum, & whales -bone, & in them ship- -ropum tha beeth of whales hide ywrought, & of seals : ay- -while yield by his y- -birthum. se birthest shall yield fifteen marts fell, & five rains, & an bearenfell, & ten hampera feathera, & bearen kirtle oth otteren, & twain shipropes, either si sixty ellen long. other si of whales hide ywrought, other of seals.	he (ohtere) was with the first men in the land, nor had he tho' more then twen- -ty cattle, and twen- -ty sheep, and twenty swine. and that little that he *eared, he eared with horses, but their rent is most in the gavel that the Fins them yield. that ga- -vel be in deer fells, and in fowl fea- -thers, and whale's bone, and in the ship- -ropes that be of whale's hide wrought and of seals : aye- -while (every one) yields by his birth [state] the birthest [state- -liest] shall yield fifteen martin's fells, and five raindeer, and an bear's fell, and ten hampers of feathers, and bear's kirtle or otter's, and twain ship ropes, either is sixty ells long. other is of whale's hide wrought, other of seals.
* ne-hæƒde contracted.			* ploughed.

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The dissimilitude between Saxon and English is more in appearance than in reality. It consists chiefly in the difference of character and orthography. Suppress that (as is done in the third column), represent the sounds by the English character and orthography, and it is immediately seen to be, not a different language, but the same in an earlier stage of its progression. And such editions of the Saxon writers, by removing the obstructions of character and false spelling, enabling us to give habitual and true, instead of uncouth and false sounds to words, would promote the study of the English language, by facilitating its examination in its mother state, and making us sensible of delicacies and beauties in it, unfelt but by the few who have had the courage, through piles of rubbish to seek a radical acquaintance with it.

Declensions of Nouns.

One of the simplifications of the study of the Anglo-Saxon which would result from a reformation of its orthography to the present English standard, would be a reduction in the number of the declensions of nouns heretofore assigned to it. The Anglo-Saxons seem to have thought some final vowel necessary to give sound to the preceding consonant, although that vowel was not itself to be sounded; and nothing being less fixed than the power of their vowels and diphthongs, they have used all the vowels indiscriminately for this purpose. Thus,

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The word Son, in modern English, was spelt by them ſuna, ſune, ſunu. Free; ſɲeah, ſɲeo, ſɲeoh, ſɲiȝ. Meal; mela, mele, melu. Man; man, mon. Milk; meolc, meoloc, meoluc, milc. Mickle; micel, mucel, mycel, mycle, myccle. Pepper; peopeɲ, peppoɲ, pipoɲ.

Notwithstanding these various orthographies, all, I presume, represent the same sound, and probably that still retained by the English. For I can more easily suppose that an unlettered people used varous modes of spelling the same word, than that they had so many different words to express the same thing. The *e* final of the English is a relict of the Anglo-Saxon practice of ending a word with a final vowel. A difference of orthography, therefore, and still less a mere difference of a final vowel is not sufficient to characterize a different declension of nouns. I should deem an unequivocal change in the sound necessary to constitute an inflection; and a difference in the inflections necessary to form a class of nouns into a different declension. On these principles I should reduce Thwaite's seven declensions to four, as follows:

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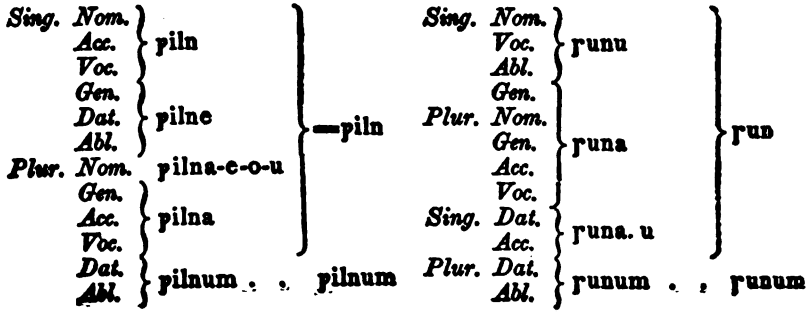
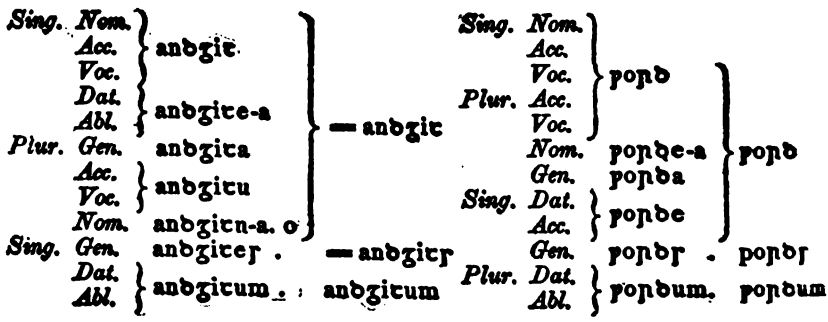
1st declension, being Thwaite's 5th and 6th:



2d declension, comprehending Thwaite's 3d and 4th:



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3d declension, comprehending Thwaite's 1st and 7th:

Sing.	*Nom.*	ſmiŏ	ſmiŏ
	Acc.		
	Voc.		
	Dat.	ſmiŏe	
	Abl.		
Plur.	*Gen.*	ſmiŏa	
Sing.	*Gen.*	ſmiŏeſ	ſmiŏſ
Plur.	*Nom.*	ſmiŏaſ	
	Acc.		
	Voc.		
	Dat.	ſmiŏum . .	ſmiŏum
	Abl.		

Sing.	*Nom.*	ſneo-oh	ſne
	Acc.		
	Dat.	ſneo	
	Abl.		
	Voc.	ſneoh	
Plur.	*Gen.*	ſnea	
	Nom.		
	Acc.		
	Voc.	ſneoſ	—ſneſ
Sing.	*Gen.*		
Plur.	*Dat.*		
	Abl.	ſneum . .	ſneum

4th declension, being Thwaite's 2d:

Sing.	*Nom.*	picega	—picez
	Voc.		
	Gen.		
	Dat.		
	Acc.		
	Abl.	picezan	
Plur.	*Nom.*		picezen
	Acc.		
	Voc.		
	Gen.	picezena	
	Dat.	picezum	picezum
	Abl.		

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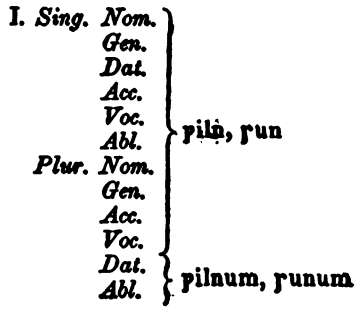
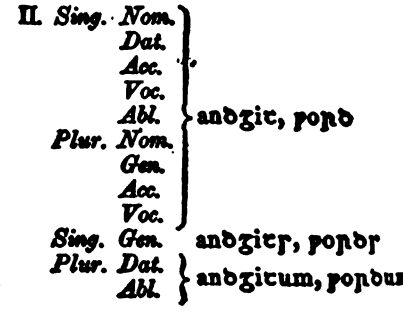
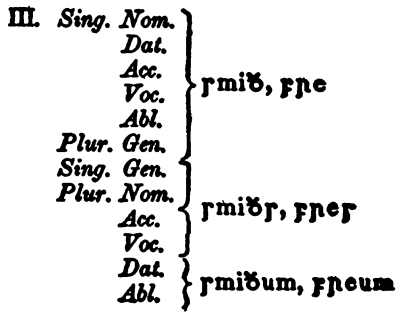
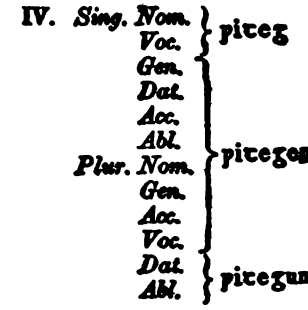
In stating the declensions here the first column presents the Anglo-Saxon orthography, the varieties of which have been deemed sufficient to constitute inflections and declensions. The second column presents a reformed orthography, supposed equivalent to the other as to sound, and consequently showing that a variety in spelling where there is a sameness of sound does not constitute an inflection, or change of declination.

The four declensions, reformed to an uniform orthography, would stand thus:









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In this scheme, then,

The first declension has no inflection, but for the dative and ablative plurals, which end in um.

The second inflects its genitive singular in ȝ, and dative and ablative plural in um.

The third inflects its genitive, singular, nominative, accusative, and vocative plural in ȝ; and dative and ablative plural in um.

The fourth preserving its radical form in the nominative and vocative singular, inflects all its other cases in en, except the dative and ablative plural, which, in all the declensions, end invariably in um.

It may be said that this is a bold proposition, amounting to a change of the language. But not so at all. What constitutes a language is a system of articulated sounds, to each of which an idea is attached. The artificial representation of these sounds on paper is a distinct thing. Surely there were languages before the invention of letters; and there are now languages never yet expressed in letters. To express the sounds of a language perfectly, every letter of its alphabet should have but a single power, and those letters only should be used whose powers successively pronounced would produce the sound required. The Italian orthography is more nearly in this state than any other with which I am acquainted; the French and English the farthest from it. Would a reformation of the orthography of the latter languages change them? If the French word *aimaient*, for example,

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were spelt *émé*, according to the French, or *ama*, according to the English power of those letters, would the word be changed? Or if the English word *cough* were spelt *cof*, would that change the word?

And how much more reasonable is it to reform the orthography of an illiterate people among whom the use of letters was so rare that no particular mode of spelling had yet been settled, no uniform power given to their letters, every one being left free to express the words of the language by such combinations of letters as seemed to him to come near their sound. How little they were agreed as to the powers of their own letters, and how differently and awkwardly they combined them to produce the same sound, needs no better example than that furnished by Dr. Hickes of the short and simple sound of *many* being endeavored to be represented by twenty different combinations of letters; to wit, in English characters, mænigeo, mænio, mæniu, menio, meniu, mænigo, mænego, manige, menigo, manegeo, mænegeo, menegeo, mænygeo, menigeo, manegu, mænigu, menegu, menego, menigu, manigo. Now, would it change the word to banish all these, and give it, in their books, the orthography of *many*, in which they have all ended? And their correction in type is no more than every reader is obliged to make in his mind as he reads along; for it is impracticable for our organs to pronounce all the letters which their bungling spellers have huddled together. No one would attempt to

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give to each of these twenty methods of spelling *many* the distinct and different sounds which their different combinations of letters would call for. This would be to make twenty words where there surely was but one. He would probably reduce them all, wherever he met with them, to the single and simple sound of *many*, which all of them aimed to produce.

This, then, is what I would wish to have done to the reader's hand, in order to facilitate and encourage his undertaking. For remove the obstacles of uncouth spelling and unfamiliar character, and there would be little more difficulty in understanding an Anglo-Saxon writer than Burns' Poems. So as to the form of the characters of their alphabet. That may be changed without affecting the language. It is not very long since the forms of the English and French characters were changed from the black letter to the Roman; yet the languages were not affected. Nor are they by the difference between the printed and written characters now in use. The following note, written by Ælfric, is not the less Latin because expressed in Anglo-Saxon characters:

'Ego Ælfricus scripsi hunc Librum in monasterio Babbonio et bedi Brihtpoldo Preposito.'

We may say truly, then, that the Anglo-Saxon language would still be the same, were it written in

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the characters now used in English, and its orthography conformed to that of the English; and certainly the acquisition of it to the English student would be greatly facilitated by such an operation.

A SPECIMEN

OF THE

FORM IN WHICH THE ANGLO-SAXON WRITINGS STILL EXTANT MIGHT BE ADVANTAGEOUSLY PUBLISHED, FOR FACILITATING TO THE ENGLISH STUDENT THE KNOWLEDGE OF THE ANGLO-SAXON DIALECT.

GENESIS—CHAPTER I.

1. On angin y-shope God hevenan and earthan.

In beginning shaped God heaven and earth.

1. On anginne gesceop God heofenan and eorthan.

2. Se earth sothelic was idle and empty, and thestre weron over there newelness broadness; and God's gost was [1]y-fared over water.

The earth forsooth was idle and empty, and darkness were over the abyss's broadness; and God's ghost was fared over water.

2. Seo eorthe sothlice wæs ydel & æmtig, and thoestru wæron ofer thære niwelnisse bradnisse & Godes gast was geferod ofer wæteru.

3. God cwoth tha, y-werth liht, and liht werth y-wrought.

God quoth then were light, and light were wrought.

3. God cwæth tha, ge-weorthe leoht; & leoht wearth ge-worht.

[1] The prefixes *ge, ye, y, i*, being equivalent, I shall use the *y* for them all.

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4. God y-saw tha that it good was, and he to-dealed that liht from tham thestrum.

God saw then that it good was, and he dealed that light from the darkness.

5. And het that liht day, and the thestre night. Tha was y-worden even and morowen an day.

And hight that light day, and the darkness night. Then was wrought even and morn ane day.

6. God cwoth tha aft, y-werth nu fastness to-mids them waterum, & to-[1]tweme the water from them waterum.

God quoth them afer, were now fastness amidst the waters, & twain the waters from the waters.

7. And God y-wroht the fastness, and to-twemed the water the weron under there fastness from them the weron boven there fastness; it was tha swa y-done.

And God wrought the fastness, and twained the waters that were under the fastness from them that were aboven there fastness; it was then so done.

8. And God het the fastness heavenan, and was tha y-wroden even & morowen other day.

And God hight the fastness heaven, and was then wrought even & morn other day.

9. God tha soothlic cwoth been y-gathered tha water the sind under there heavenan, and atewy

4. God geseah tha thæt hit god was, and he to dælde that leoht fram tham theostrum.

5. And het that leoht dæg, and tha theostra niht. Tha wæs ge-worden æfen & morgen an dæg.

6. God cwæth tha eft, gewurthe nu fæstnis tomiddes tham waterum, and totwæme tha wæteru fram tham wæterum.

7. And God geworhte tha fæstnisse, & totwæmde the wæteru the wæron under thære fæstnisse fram tham the wæron bufan thære fæstnisse; hit wæs tha swa gedon.

8. And God het tha fæstnisse heofenan, and wæs tha geworden æfen & morgen other dæg.

9. God tha sothlice cwæth, beon gegaderode tha wæteru the sind under theare heofenan, and

[1] *Twam* (tweme) signifies twain.

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dryness; it was tha swa y-done.

God then forsooth quoth, be gathered the waters that are under the heavens, and shew dryness; it was then so done.

10. And God y-kyed the dryness earthan, and the water y-gathering he het seas: God y-saw tha that it good was.

And God called the dryness earth, and the water gathering he hight seas: God saw then that it good was.

11. And cwoth, sprute se earth growend gras & seed workend, and apple bear tree wæstm workend after his kin, these seed sy on him selfum over earthen; it was tha swa y-done.

And quoth, sprout the earth growing grass & seed working, and apple bear tree fruit working after his kin, the seed be in him self over earth; it was then so done.

12. And se earth fortha-teah growend wort & seed bearing by hire kin; & tree westm workend, and y-whilc seed havend after his hue. God y-saw tha that it good was;

And the earth[1] *forth-brought growing wort & seed bearing by their kin; & tree fruit working, and ilc seed having after its hue. God saw then that it good was;*

13. And was y-wroden even and morwen the third day.

And was wrought even and morn the third day.

æteowigedrignis, hit wæs tha gedon.

10. And God gecigde tha drignisse eorthan and thæra wætera gegaderunga he het sæs. God geseah tha that hit god wæs.

11. And cwæth, spritte seo eorthe growende gær and sæd wircende, and æpplebære treow, wæstm wir cende æfter his cinne; thæs sædsig on him silfum ofer eorthan. Hit wæs tha swa gedon.

12. And seo eorthe fortha-teah growende wirte and sæd berende be hire cinne, and treow westm wircende & gehwilc sæd hæbbende æfter his hiwe. God geseah that hat hit god was.

13. And wæs gewroden æfen & morgen the thridda dæg.

[1] *Teon producere, fortha-teon*, forth-bring. See post v. 20, *teon*, forth; also 11, 9, *fortha-teah*.

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14. God cwath tha sothlic, be nu liht on there heavenan fastness, and to-dealon day and niht, and been to-toknum & to-tidum, & to-dayum, & to-yearum.

God quoth then forsooth, be now light in the heaven [1]*fastness, and deal day and night, and be tokens & tides, & days & years.*

14. God cwæth tha sothlice, beo nu leoht on thære heofenan fæstnisse, and to ælon dæg & nihte, & beon to tacnum & to tidum & to dagum & to gearum.

15. And hi shinon on there heavenon fastness, and a-lithon tha earthan; it was tha swa y-wroden.

And they shine in the heaven fastness, and a-lighten the earth; it was then so wrought.

15. And hig scinon on thære heofenan fæstnisse and alihton tha eorthan. Hit wæs tha swa geworden.

16. And God y-wroht twa mickle liht, that mair liht to these days lihting, & that less liht to the niht lihting; and starran he y-wroht.

And God wrought twa mickle lights, the more light to the days lighting, & the less light to the night lighting; and stars he wrought.

16. And God geworhte twa micele leoht, that mare leoht, to thæs dæges lightinge, and that læsse leoht to thære nihte lihtinge; & steorran he geworhte.

17. And y-set hi on there heavenon that hi shinon over earthan,

And set them in the heavens that they shine over earth,

17. And gesette hig on thære heofenan, that hig scinon over eorthan.

18. And gimdon these days and these niht, and to-dealdon liht and thester. God y-saw tha that it good was.

And govern the days and the nights, and deal light and darkness. God saw then that it good was.

18. And gimdon thæs dæges thære nihte, & to dældon leoht and theostra. God geseah tha that hit god wæs.

[1] ***Fastness***, **firmament.**

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19. And was y-wroden even and morwen, the fourth day.

And was wrought even and morn, the fourth day.

20. God cwoth eke swilc, teon nu that water forth swimmend kin cuic in life, & flying kin over earthan under there heavenan fastness.

God quoth [1]eke swilc, bring now the water forth swimming kind quick in life. & flying kind over earth under the heaven fastness.

21. And God y-shope tha the mickelan whales and all livend fishen, and stirrendlia the tha water tugon forth on heor hiwum, and all flyend kin after heor kin; God y-saw tha that it good was:

And God [2]shope then the mickle whales, and all living fishes, and stirring that the water [3]tows forth in their [4]hue, and all flying kind after their kind; God saw then that it good was;

22. And bletsed hi thus quothend, waxath and beeth y-manifold & y-fillath the sea-water and tha fuweles been y-manifold over earthan.

And blessed them thus quothing, wax and be manifold, & fill the sea-water and the fowles be manifold over earth.

23. And tha was y-wroughten even and morwen tha fifth day.

And then was wrought even and morn the fifth day.

19. And wæs geworden æfen & morgen se feortha dæg.

20. God cwæth eac swilce, teon nu tha wæteru forth swimmede cynn cuic on life, & fleogende cinn ofer eorthan under thære heofenan fæstnisse.

21. And God gesceope tha tha micelanh walas, & eall libbende fisccinn & stirigendlice, the tha wæterut ugon forth on heora hiwum, and eall fleogende cinn æfter heora cinne. God geseah tha that hit god wæs.

22. And bletsode hig thus cwethende, weaxath & beoth gemenigfilde, & gefillath thære sæ wæteru, and tha fugelas beon gemenigfilde ofer eorthan.

23. And tha wæs geworden æfen and morgen se fifta dæg.

[1] *Eac-swilc*, also.
[2] *Shope* (Bailey), for shaped.
[3] *Verstegan—tuge*, to draw out—to lead; toga ductor (Benson).
[4] *Hiwe*, color (Versteg-Benson); it means also a hive, house, family.

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24. God cwoth eke-swilc, lead se earth forth cuic niten on heor kin, & creepend kin and deer after heor hiwum. It was tha swa y-wroden.

God quoth eke-swilc, lead the earth forth quick [1]*neats in heor kin, & creeping kind and* [2]*deer after their hue. It was then so wrought.*

24. God cwæth eacswilc, læde seo eorthe forth cuic nitena on heora cinne, and creopende cinn, and deor æfter heora hiwum. Hit wæs tha swa geworden.

25. And God y-wroht there earthen deer after hir hiwum, and tha neaton, and all creepend kin on hior kin. God y-saw tha that it good was.

And God wrought the earthen deer after their hue, and the neats, and all creeping kind in their kind. God saw then that it good was.

25. And God geworhte thære eorthan deor æfter hira hiwum, & tha nitenu and eall creopende cynn on heora cynne. God geseah tha that hit good wæs.

26. And cwoth, [3]Uton, workan man to and-likeness, and to our y-likeness, and he sy over the fishes, and over the fowles, and over the deer, and over all y-shaft, & over all the crepend the stirreth on earthan.

And quoth, Come, work man to likeness, and to our likeness, and he be over the fishes, and over the fowls, and over the deer, and over all creatures, & over all the creeping that stirreth on earth.

26. And cwæth, Uton, wircean, man to andlicnisse, and to ure gelicnisse, and he sig ofer tha fixas, & ofer tha fugelas, and ofer the deor, and ofer ealle gesceafta, and ofer ealle tha creopende se stirrath on eorthan.

27. God y-shope the man to his and-likeness, to Godes and-likeness he y-shope hine werhoods and wife-hoods he y-shope hy.

God shope then man to his like-

27. God gesceop tha man to his andlicnisse, to Godes andlicnisse he gesceop hine, werhades and wifhades he gesceop hig.

[1] *Nitena*, neat cattle.

[2] *Deer*. Probably this was then the generic name for all the feræ or wild quadrupeds.

[3] *Uton*, verbum hortantis, ace (Benson); come.

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ness, to God's likeness he shope him, man-hoods and wife-hoods he shope them.

28. And God hy bletsed and cwoth, waxeth and beeth y-manifold, and y-filleth the earthan, and y-wieldeth hy, and haveth on yourum y-wield there sea-fishes and there lyft-fowels and all neaten that stirreth over earthan.

And God them blessed and quoth, wax and be manifold, and fill the earth, and wield them, and have in your wield the sea-fishes and the air-fowls and all neats that stirreth over earth.

28. And God hig bletsode and cwæth, wexath and beoth gemenigfilde, and gefillath tha eorthan and gewildath hig, and habbath on eowrum gewealde thære sæ fixas and thære lyfte fugelas & ealle nytenu the stiriath ofer eorthan.

29. God cwoth tha, [1]even, I for-give you all grass and wort-seed bearend over earthan, and al treewa tha the haveth seed on him selfon, heor owens kins, that hy been you to meat.

God quoth then, even, I give you all grass and wort-seed bearing over earth, and all trees that haveth seed in himself, their own kinds, that they be you to meat.

29. God cwæth tha, Efne, Ic forgeaf eow eall gærs and wyrta sæd berende ofer eorthan, and ealle treowa tha the habbath sæd on him silfon heora agenes cynnes, that hig beon eow to mete.

30. And allum neatum and all fowelkin and eallum tham the stirreth on earthan, on tham the is livend life, and hi havon hem to yreordien. It was tha swa y-done.

And all neats and all fowl-kind, and all them that stirreth on earth, on them that is living life, and they have them to feed. It was then so done.

30. And eallum nytenum & eallum fugelcynne and eallum tham the stiriath on eorthan, on tham the ys libbende lif, that hig habbon him to gereordienne. It was tha swa gedon.

[1] *Efne*, verily, *adv.* (Bailey); lo!

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31. And God y-saw all the thing the he y-wroht, & he weron good. Was tha y-wroughten even and morwen se sixth day.

And God saw all the things that he wrought, & they were good. Was then wrought even and morn the sixth day.

31. And God y-saw ealle tha thing the he geworhte, and hig wæron swithe gode. Was tha geworden æfen and mergen se sixth dæg.

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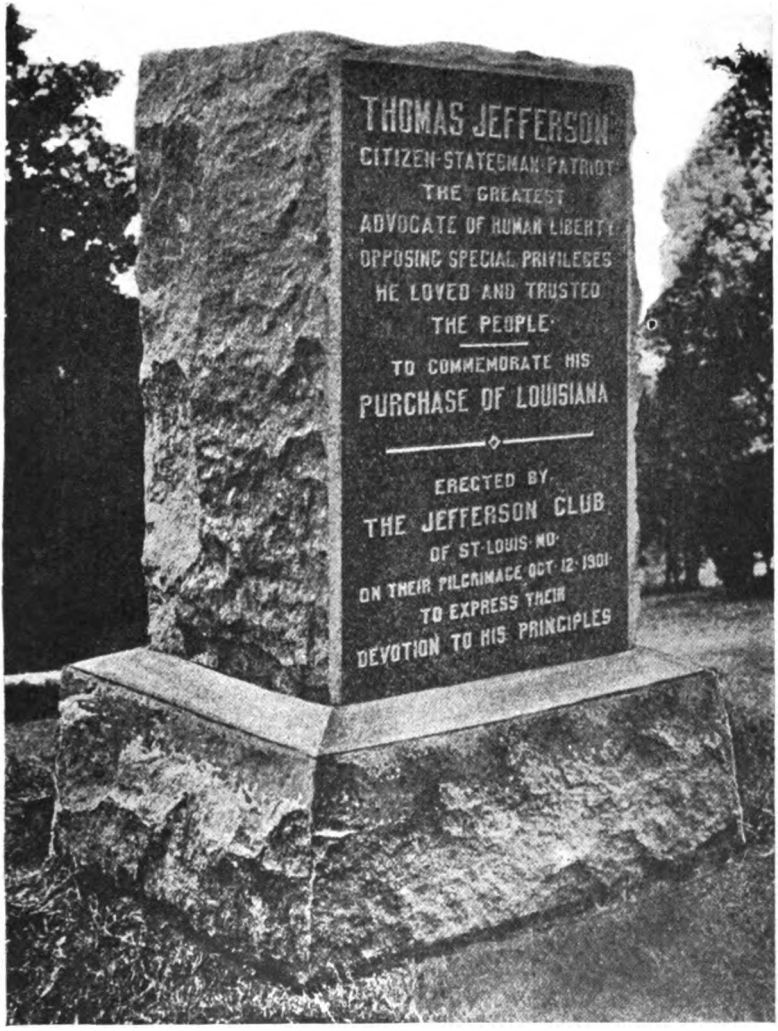

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THOUGHTS ON ENGLISH PROSODY.

AN ESSAY ON THE ART OF POESY.

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INTRODUCTORY NOTES.

The following letter, in which Jefferson explains his reasons for writing his "Thoughts on English Prosody," was written to Monsieur F. J. de Chastellux. The letter is undated, but we infer from its tone that the essay was written after Jefferson's return from France in 1789, and probably during the time he was Secretary of State:

"Among the topics of conversation which stole off like so many minutes the few hours I had the happiness of possessing you at Monticello, the measures of English verse was one. I thought it depended like Greek and Latin verse, on long and short syllables arranged into regular feet. You were of a different opinion. I did not pursue this subject after your departure, because it always presented itself with the painful recollection of a pleasure which in all human probability I was never to enjoy again. This probability like other human calculations has been set aside by events; and we have again discussed on this side the Atlantic a subject which had occupied us during some pleasing moments on the other. A daily habit of walking in the Bois de Boulogne gave me an opportunity of turning this subject in my mind and I determined to present you my thoughts on it in the form of a letter. I for some time parried the difficulties which assailed me, but at length I found they were not to be opposed, and their triumph was complete. Error is the stuff of which the web of life is woven and he who lives longest and wisest is only able to weave out the more of it. I began with the design of converting you to my opinion that the arrangement of long and short syllables into regular feet constituted the harmony of English verse. I ended by discovering that you were right in denying that proposition. The next object was to find out the real circumstance which gives harmony to English poetry and laws to those who make it. I present you with the result. It is a tribute due to your friendship. It is due you also as having recalled me from an error in my native tongue and that, too, in a point the most difficult of all others to a foreigner, the law of its poetical numbers."

This essay on English poesy did not appear in either the Congressional or Ford editions of Jefferson's Writings, and so far as can be ascertained has never been published before in any form.

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THOUGHTS ON ENGLISH PROSODY.

Every one knows the difference between verse and prose in his native language; nor does he need the aid of prosody to enable him to read or to repeat verse according to its just rhythm. It is the business of the poet so to arrange his words as that, repeated in their accustomed measures they shall strike the ear with that regular rhythm which constitutes verse.

It is for foreigners principally that Prosody is necessary; not knowing the accustomed measures of words, they require the aid of rules to teach them those measures and to enable them to read verse so as to make themselves or others sensible of its music. I suppose that the system of rules or exceptions which constitutes Greek and Latin prosody, as shown with us, was unknown to those nations, and that it has been invented by the moderns to whom those languages were foreign. I do not mean to affirm this, however, because you have not searched into the history of this art, nor am I at present in a situation which admits of that search. By industrious examination of the Greek and Latin verse it has been found that pronouncing certain combinations of vowels and consonants long, and

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certain others short, the actual arrangement of those long and short syllables, as found in their verse, constitutes a rhythm which is regular and pleasing to the ear, and that pronouncing them with any other measures, the run is unpleasing, and ceases to produce the effect of the verse. Hence it is concluded and rationally enough that the Greeks and Romans pronounced those syllables long or short in reading their verse; and as we observe in modern languages that the syllables of words have the same measures both in verse and prose, we ought to conclude that they had the same also in those ancient languages, and that we must lengthen or shorten in their prose the same syllables which we lengthen or shorten in their verse. Thus, if I meet with the word *præteritos* in Latin prose and want to know how the Romans pronounced it, I search for it in some poet and find it in the line of Virgil, "*O mihi præteritos referat si Jupiter annos!*" where it is evident that *præ* is long and *te* short in direct opposition to the pronunciation which we often hear. The length allowed to a syllable is called its quantity, and hence we say that the Greek and Latin languages are to be pronounced according to quantity.

Those who have undertaken to frame a prosody for the English language have taken quantity for their basis and have mounted the English poetry on Greek and Latin feet. If this foundation admits of no question the prosody of Doctor Johnson, built upon it, is perhaps the best. He comprehends

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under three different feet every combination of long and short syllables which he supposes can be found in English verse, to wit: 1. a long and a short, which is the trochee of the Greeks and Romans; 2. a short and a long, which is their iambus; and 3. two short and a long, which is their anapest. And he thinks that all English verse may be resolved into these feet.

It is true that in the English language some one syllable of a word is always sensibly distinguished from the others by an emphasis of pronunciation or by an accent as we call it. But I am not satisfied whether this accented syllable be pronounced longer, louder, or harder, and the others shorter, lower, or softer. I have found the nicest ears divided on the question. Thus in the word *calenture*, nobody will deny that the first syllable is pronounced more emphatically than the others; but many will deny that it is longer in pronunciation. In the second of the following verses of Pope, I think there are but two short syllables.

> Oh! be thou bless'd with all that Heav'n can send
> Long health, long youth, long pleasure, and a friend.

Innumerable instances like this might be produced. It seems, therefore, too much to take for the basis of a system a postulatum which one-half of mankind will deny. But the superstructure of Doctor Johnson's prosody may still be supported by substituting for its basis accent instead of quantity; and nobody will deny us the existence of accent.

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In every word of more than one syllable there is some one syllable strongly distinguishable in pronunciation by its emphasis or accent.

If a word has more than two syllables it generally admits of a subordinate emphasis or accent on the alternate syllables counting backwards and forwards from the principal one, as in this verse of Milton:

Well if thrown out as supernumerary,

where the principal accent is on *nu*, but there is a lighter one on *su* and *ra* also. There are some few instances indeed wherein the subordinate accent is differently arranged, as *parisyllabic*, *Constantinople*. It is difficult, therefore, to introduce words of this kind into verse.

That the accent shall never be displaced from the syllable whereon usage hath established it is the fundamental law of English verse.

There are but three arrangements into which these accents can be thrown in the English language which entitled the composition to be distinguished by the name of verse. That is, 1. Where the accent falls on all the odd syllables; 2. Where it falls on all the even syllables; 3. When it falls on every third syllable. If the reason of this be asked, no other can be assigned but that it results from the nature of the sounds which compose the English language and from the construction of the human ear. So, in the infinite gradations of sounds from

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the lowest to the highest in the musical scale, those only give pleasure to the ear which are at the intervals we call whole tones and semitones. The reason is that it has pleased God to make us so. The English poet then must so arrange his words that their established accents shall fall regularly in one of these three orders. To aid him in this he has at his command the whole army of monosyllables which in the English language is a very numerous one. These he may accent or not, as he pleases. Thus is this verse:

'Tis just resentment and becomes the brave.
—Pope.

the monosyllable *and* standing between two unaccented syllables catches the accent and supports the measure. The same monosyllable serves to fill the interval between two accents in the following instance:

From the obscure and subtle, but to know.
—Milton

The monosyllables *with* and *in* receive the accent in one of the following instances and suffer it to pass over them in the other.

The tempted *with* dishonor foul, supposed.
—Milton.

Attempt *with* confidence, the work is done.
—Hopkins.

Which must be mutual *in* proportion due.
—Milton.

Too much of ornament *in* outward show.
—Milton.

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The following lines afford other proofs of this license.

Yet, yét, I lóve—from Abelard it came.
—POPE.

Flow, flow, my stream this devious way.
—SHENSTONE.

The Greeks and Romans in like manner had a number of syllables which might in any situation be pronounced long or short without offending the ear. They had others which they could make long or short by changing their position. These were of great avail to the poets. The following is an example:

Πολλάκις ὦ πολυφάμε, τὰ | μη καλὰ | καλὰ πε | φανλαι.
—THEOCRITUS.

Ἄγες, Ἄγες βροτολοιγὲ, μαι φόνε τει χεσιπλῆτα.
—HOM. IL.

Μετρα δε τεμ' χε θεοισι, το | νδ μετρόν | εστιν ἀγίσον.
—PHOCYL.

where the word Ages, being used twice, the first syllable is long in the first and short in the second instance, and the second is short in the first and long in the second instance.

But though the poets have great authority over the monosyllables, yet it is not altogether absolute. The following is a proof of this:

Through the dark póstern óf time lóng eláps'd.
—YOUNG.

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It is impossible to read this without throwing the accent on the monosyllable *of* and yet the ear is shocked and revolts at this.

That species of our verse wherein the accent falls on all the odd syllables, I shall call, from that circumstance, odd or imparisyllabic verse. It is what has been heretofore called trochaic verse. To the foot which composes it, it will still be convenient and most intelligible to retain the ancient name of Trochee, only remembering that by that term we do not mean a long and a short syllable, but an accented and unaccented one.

That verse wherein the accent is on the even syllables may be called even or parisyllabic verse, and corresponds with what has been called iambic verse; retaining the term iambus for the name of the foot we shall thereby mean an unaccented and an accented syllable.

That verse wherein the accent falls on every third syllable, may be called trisyllabic verse; it is equivalent to what has been called anapestic; and we will still use the term anapest to express two unaccented and one accented syllable.

Accent then is, I think, the basis of English verse; and it leads us to the same threefold distribution of it to which the hypothesis of *quantity* had led Dr. Johnson. While it preserves to us the simplicity of his classification it relieves us from the doubtfulness, if not the error, on which it was founded.

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Observations on the Three Measures.

Wherever a verse should regularly begin or end with an accented syllable, that unaccented syllable may be suppressed.

Bréd on plaíns, or bórn in válleys,
Whó would bid those scénes adíeu?
Stránger tó the árts of málice,
Whó would éver coúrts pursúe?
—Shenstone

Rúin séize thée, rúthléss kíng!
Confúsion on thy bánners wáit;
Though, fanned by Cónquest's crímson wíng,
They mock the aír with idle state.
Helm, nor haúlberk's twisted máil,
Nor ev'n thy vírtues, Týrant, shall avaíl
To save thy secret soúl from nightly féars,
From Cámbria's cúrse, from Cámbria's téars!
—Gray.

Ye Shép | herds! give eár | to my láy,
And take no more heéd of my shéep;
They have nóthing to dó but to stráy;
I have nóthing to dó but to wéep.
—Shenstone.

In the first example the unaccented syllable with which the imparisyllabic (odd) verse should end is omitted in the second and fourth lines. In the second example the unaccented syllable with which the parisyllabic (even) verse should begin is omitted in the

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first and fifth lines. In the third instance one of the unaccented syllables with which the trisyllabic (triple) verse should begin, is omitted in the first and second lines and in the first of the following line both are omitted:

> Under this marble, or under this sill
> Or under this turf, or e'en what you will
> Lies one who ne'er car'd, and still cares not a pin
> What they said, or may say, of the mortal within;
> But who, living or dying, serene still and free,
> Trusts in God that as well as he was he shall be.
>
> —POPE.

An accented syllable may be prefixed to a verse which should regularly begin with an accent and added to one which should end with an accent, thus:

> 1. Dauntless on his native sands
> The dragon-son of Mona stands;
> In glittering arms and glory drest,
> High he rears his ruby crest.
> There the thundering strokes begin,
> There the press, and there the din;
> Talymalfra's rocky shore
>
> —GRAY.

Again:

> There Confusion, Terror's child,
> Conflict fierce, and Ruin wild,
> Agony, that pants for breath,
> Despair, and honorable death.
>
> —GRAY.

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2. Whát is this world? thy schóol Oh! misery!
Our ónly leśson iś to learn to súffer;
And hé who knows not thát, was bórn for nothing.
My comfort iś each móment tákes awáy
A grain at léast from the dead lóad that's ón me
And gives a néarer próspect óf the grave.
—YOUNG.

3. Says Richard to Thómas (and seém'd half afraid),
"I'm thinking to márry thy mistress's máid;
Now, becaúse Mrs. Lucy to theé is well known,
I will dó't if thou bidst me, or lét it alone."
Said Thomás to Richard, "To speák my opinion,
There is nót such a bitch in King Géorge's dominion;
And I firmly believe, if thou knéw'st her as I do,
Thou wouldst choóse out a whipping-post first to be tied to
She's peevish, she's thievish, she's úgly, she's old,
And a liár, and a fóol, and a slút, and a scold."
Next dáy Richard hásten'd to chufch and was wed,
And ere night had infórm'd her what Thómas had said.
—SHENSTONE.

An accented syllable can never be either omitted or added without changing the character of the verse. In fact it is the number of accented syllables which determines the length of the verse. That is to say, the number of feet of which it consists.

Imparisyllabic verse being made up of Trochees should regularly end with an unaccented syllable; and in that case if it be in rhyme both syllables of the foot must be rhymed. But most frequently the unaccented syllable is omitted according to the license before mentioned and then it suffices to

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rhyme the accented one. The following is given as a specimen of this kind of verse.

Shépherd, woúldst thou heŕe obtaiń
Pléasure uńalloy'd with páin?
Joý that súits the rúral sphére?
Geńtle shépherd, léend an eár.

Leárn to rélish cálm delíght
Vérdant váles and foúntains bríght;
Treés that nód o'er slóping híls,
Cavés that écho tínkling ríls.

Íf thou cánst no chárm disclóse
Iń the siḿplest búd that blóws;
Gó, forsáke thy plaín and fóld;
Joín the crowd, and toíl for góld.

Tránquil pleásures néver clóy;
Bánish eách tumúltuous jóy;
Aíl but lóve—for lóve inspíres
Fónder wishes, wármer fíres

Sée, to sweeten thy repose,
The blóssom buds, the fountain flows;
Ló! to crown thy healthful board,
Aíl that milk and fruits afford.

Séek no more—the rest is vain;
Pléasure ending soon in pain:
Ańguish lightly gilded o'er:
Clóse thy wish, and seek no more.

—Shenstone.

Parisyllabic verse should regularly be composed of all iambuses; that is to say, all its even syllables

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should be accented. Yet it is very common for the first foot of the line to be a trochee as in this verse:

> **Yé who e'er lóst an ángel, píty ḿe!**

Sometimes a trochee is found in the midst of this verse. But this is extremely rare indeed. The following, however, are instances of it taken from Milton.

> **To dó ought góod *néver* will bé our tásk**
> **Behésts obéy, *wórthiest* to bé obéyed.**

> **Than sélf-esteém, *groúnded* on júst and ríght**
> **Leans the huge elephant the *wisest* of brutes!**

In these instances it has not a good effect, but in the following it has:

> **This hánd is míne—*óh! what* a hánd is hére!**
> **So soft, souls sink into it and are lost.**

When this trochee is placed at the beginning of a verse, if it be not too often repeated it produces a variety in the measure which is pleasing. The following is a specimen of the parisyllabic verse, wherein the instances of this trochee beginning the verse are noted:

> ***Píty* the sorrows óf a poór old mán,**
> **Whose tremb́ling líḿbs have borne him tó your doór.**
> **Whose dayś are dẃindled tó the shórtest span;**
> ***Óh! give* reliéf, and Heáven will bleśs your stóre.**

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These tattered clothes my poverty bespeak,
These hoary locks proclaim my lengthen'd years,
And many a furrow in my grief-worn cheek
Has been the channel to a flood of tears.

Yon house, erected on the rising ground,
With tempting aspect, drew me from my road;
For plenty there a residence has found,
And grandeur a magnificent abode.

Hard is the fate of the infirm and poor!
Here, as I craved a morsel of their bread,
A pamper'd menial drove me from the door,
To seek a shelter in an humbler shed.

Oh! take me to your hospitable dome;
Keen blows the wind, and piercing is the cold!
Short is my passage to the friendly tomb,
For I am poor, and miserably old.

Heaven sends misfortunes; why should we repine?
'Tis Heaven has brought me to the state you see;
And your condition may be soon like mine,
The child of sorrow and of misery.

—Moss.

Trisyllabic verse consists altogether of anapests, that is, of feet made up of two unaccented and one accented syllable; and it does not admit a mixture of any other feet. The following is a specimen of this kind of verse:

I have found out a gift for my fair;
I have found where the wood-pigeons breed;
But let me that plunder forbear,
She will say 'twas a barbarous deed:

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For he né'er could be trúe, she averr'd,
Who could rób a poor bird of its yóung;
And I lovéd her the móre when I héard
Such teńderness fall from her tóngue.
—Shenstone.

The following are instances of an iambus in an anapestic verse:

Or uńder this túrf, or ev'n what they will.
—Pope.

It néver was knówn that círcular létters.
—Swift.

They are extremely rare and are deformities, which cannot be admitted to belong to the verse, notwithstanding the authority of the writers from whom they are quoted. Indeed, the pieces from which they are taken are merely pieces of sport on which they did not mean to rest their poetical merit.

But to what class shall we give the following species of verse? "God save great Washington." It is triple verse, but the accent is on the first syllable of the foot instead of the third. Is this an attempt at dactylian verse? or shall we consider it still as anapestic, wherein either the two unaccented syllables which should begin the verse are omitted; or else the two which should end it are, in reciting, transposed to the next verse to complete the first anapest of that, as in Virgil in the following instance, the last syllable of the line belongs to the next, being amalgamated with that into one.[1]

[1] Virgil quotation not given.

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I am not able to recollect another instance of this kind of verse and a single example cannot form a class. It is not worth while, therefore, to provide a foreigner with a critical investigation of its character.

Of Elision.

The vowels only suffer elision except that "v" is also omitted in the word over and "w" in will, "h" in have. This is actually made in most cases, as it was with the Greeks. Sometimes, however, it is neglected to be done, and in those cases the reader must make it for himself, as in the following examples:

Thou yet *mightest* act the friendly part
And lass *unnoticed* from malignant right
And *fallen* to save his injur'd land
Impatient for *it is* past the promis'd hour.

He *also against* the house of God was bold
Anguish and doubt and fear and sorr*ow and* pain
Of Phlegma with *the he*roic race was joined
Damasco, or Maroc*co, or* Trebisond
All her *original* brightness, nor appear'd
Open or understood must be resolv'd.

Of Synecphonesis.

Diphthongs are considered as forming one syllable. But vowels belonging to different syllables are sometimes forced to coalesce into a diphthong if the measure requires it. Nor is this coalescence prevented by the intervention of an "h," a "w" or a liquid. In this case the two syllables are run into

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one another with such rapidity as to take but the time of one.

The following are examples:

And wish the avenging fight
Be it so, for I submit, his doom is fair.
When wint'ry winds deform the plenteous year
Droop'd their fair leaves, nor knew the unfriendly soil
The radiant morn resumed her orient pride
While born to bring the Muse's happier days
A patriot's hand protects a poet's lays
Ye midnight lamps, ye curious homes
That eagle genius! had he let fall—

Fair fancy wept; and echoing sighs confest
The sounding forest fluctuates in the storm
Thy greatest influence own
Issueing from out the portals of the morn
What groves nor streams bestow a virtuous mind
With many a proof of recollected love.
With kind concern our pitying eyes o'erflow
Lies yet a little embryo unperceiv'd—

Now Margaret's curse is fall'n upon our heads
And even a Shakespeare to her fame be born
When mineral fountains vainly bear
O how self-fettered was my groveling soul!
To every sod which wraps the dead
And beam protection on a wandering maid
Him or his children, evil he may be sure
Love unlibidinous resigned, nor jealousy
And left to herself, if evil thence ensue.
Big swell'd my heart and own'd the powerful maid
Proceeding, runs low bellowing round the hills
Thy cherishing, thy honouring, and thy love
With all its shadowy shapes is shown
The shepherd's so civil you have nothing to fear.

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The elision of a vowel is often actually made where the coalescence before noted be more musical. Perhaps a vowel should never suffer elision when it is followed by a vowel or where only an "h," a "w" or a liquid intervenes between that and a next vowel, or in other words there should never be an elision where synecphonesis may take place. Consider the following instances:

Full of the dear ecstatic pow'r, and sick
Dare not th' infectious sigh; thy pleading look
While ev'ning draws her crimson curtains round
And fright the tim'rous game
Fills ev'ry nerve, and pants in ev'ry vein.

Full of the dear ecstatic power, and sick
Dare not the infectious sigh; thy pleading look
While evening draws her crimson curtains round
And fright the timorous game
Fills every nerve. and pants in every vein.

The pronunciation in these instances with the actual elision is less agreeable to my ear than by synecphonesis.

Of Rules for the Accent.

Accent deciding the measure of English verse as quantity does that of the Latin, and rules having been formed for teaching the quantity of the Latins it would be expected that rules should also be offered for indicating to foreigners the accented syllable of every word in English. Such rules have been

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attempted. Were they to be so completely formed as that the rules and their necessary exceptions would reach every word in the language, they would be too great a charge on the memory and too complicated for use either in reading or conversation. In the imperfect manner in which they have been hitherto proposed they would lead into infinite errors. It is usage which has established the accent of every word, or rather I might say it has been caprice or chance, for nothing can be more arbitrary or less consistent. I am of opinion it is easier for a foreigner to learn the accent of every word individually, than the rules which would teach it. This his dictionary will teach him, if, when he recurs to it for the meaning of a word, he will recollect that he should notice also on which syllable is its accent. Or he may learn the accent by reading poetry, which differs our language from Greek and Latin, wherein you must learn their prosody in order to read their poetry. Knowing that with us the accent is on every odd syllable or on every even one or on every third, he has only to examine of which of these measures the verse is to be able to read it correctly. But how shall he distinguish the measure to which the verse belongs?

If he can find in the piece any one word the accent of which he already knows, that word will enable him to distinguish if it be parisyllabic or imparisyllabic. Let us suppose, for example, he would read the following piece:

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How sleep the brave, who sink to rest,
By all their country's wishes blest!
When Spring, with dewy fingers cold,
Returns to deck their hallowed mould,
She there shall dress a *sweeter* sod
Than Fancy's feet have ever trod.

By fairy hands their knell is rung;
By forms unseen their dirge is sung;
There Honor comes, a pilgrim gray,
To bless the turf that wraps their clay;
And Freedom shall a while repair,
To dwell a weeping hermit there!

—COLLINS.

He finds the word *sweeter*, the accent of which he has already learned to be on the first syllable, sweet. He observes that that is an even syllable, being the sixth of the line. He knows then that it is parisyllabic verse and from that he can accent the whole piece. If he does not already know the accent of a single word he must look in his dictionary for some one, and that will be a key to the whole piece. He should take care not to rely on the first foot of any line, because, as has been before observed, that is often a trochee even in the parisyllabic verse. Without consulting his dictionary at all, or knowing a single accent, the following observation will enable him to distinguish between these two species of verse when they are in rhyme. An odd number of syllables with a single rhyme, or an even number with a double rhyme, prove the verse to be imparisyllabic.

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An even number of syllables with a single rhyme, or an odd number with a double one, prove it to be parisyllabic, *e. g.*:

Learn by this unguarded lover
When your secret sighs prevail
Not to let your tongue discover
Raptures that you should conceal.
—CUNNINGHAM.

He sung and hell consented
To hear the poet's prayer
Stern Proserpine relented
And gave him back the fair.
—POPE.

If in thus examining the seat of the accent he finds it is alternately on an odd and an even syllable, that is to say, on the third, sixth, ninth, twelfth syllables, the verse is trisyllabic.

With her bow I stray'd amid fóuntains and bowers!
Or loĭter'd behínd, and collected the flowérs!
Then breathless with ardor my fair one pursued,
And to think with what kindness my gărland she viewĕd!
But be still, my fond heart! this emōtion give o'er;
Fain wouldst thou forgĕt thou must love her no more.
—SHENSTONE.

It must be stated that in this kind of verse we should count backward from the last syllable, if it be a single rhyme, or the last but one if it be double; because one of the unaccented syllables which should begin the verse is so often omitted. This last syllable

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in the preceding example should be the twelfth. When the line is full it is accented of course. Consulting the dictionary, therefore, we find in the first line the ninth syllable accented; in the second, the sixth; in the third line the accented syllables there being alternately odd and even, to wit, the third, sixth, ninth and twelfth, we know the verse must be trisyllabic.

The foreigner then first determining the measure of the verse, may read it boldly. He will commit a few errors, indeed; let us see what they are likely to be. In imparisyllabic verse none, because that consists of trochees invariably; if an unaccented syllable happens to be prefixed to the verse, he will discover it by the number of syllables. In parisyllabic verse, when a trochee begins the verse, he will pronounce that foot wrong. This will perhaps happen once in ten lines; in some authors more, in others less. In like manner he will pronounce wrong the trochee in the middle of the line. But this he will encounter once in some hundreds of times. In the trisyllabic verse he can never commit an error if he counts from the end of the line. These imperfections are as few as a foreigner can possibly expect in the beginning; and he will reduce their number in proportion as he acquires by practice a knowledge of the accents.

The subject of accent cannot be quitted till we apprise him of another imperfection which will show itself in his reading, and which will be longer remov-

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ing. Though there be accents on the first, the second or the third syllables of the foot, as has been before explained, yet is there subordination among these accents, a modulation in their tone of which it is impossible to give a precise idea in writing. This is intimately connected with the sense; and though a foreigner will readily find to what words that would give distinguished emphasis, yet nothing but habit can enable him to give actually the different shades of emphasis which his judgment would dictate to him. Even natives have very different powers as to this article. This difference exists both in the organ and the judgment. Foote is known to have read Milton so exquisitely that he received great sums of money for reading him to audiences who attended him regularly for that purpose. This difference, too, enters deeply into the merit of theatrical actors. The foreigner, therefore, must acquiesce under a want of perfection which is the lot of natives in common with himself.

We will proceed to give examples which may explain what is here meant, distinguishing the accents into four shades by these marks '''' ''' '' ' the greater number of marks denoting the strongest accents.

Oh when the growling winds contend and all
The sounding forest fluctuates in the storm
To sink in warm repose, and hear the din
Howl o'er the steady battlements, delights
Above the luxury of vulgar sleep.

—Armstrong.

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Life's cares are comforts; such by heav'n design'd
He that has none, must make them or be wretched
Cares are employments; and without employ
The soul is on a rack, the rack of rest.

—Young.

O! lost to virtue, lost to manly thought,
Lost to the noble sallies of the soul!
Who think it solitude, to be alone.
Communion sweet! communion large and high!
Our reason, guardian angel, and our God!
When nearest these, when others most remote;
And all, ere long, shall be remote, but these.

—Young.

By nature's law, what may be, may be now;
There's no prerogative in human hours.
In human hearts what bolder thought can rise,
Than man's presumption on to-morrow's dawn?
Where is to-morrow? In another world.
For numbers this is certain; the reverse
Is sure to none; and yet on this perhaps,
This peradventure, infamous for lies,
As on a rock of adamant, we build
Our mountain hopes; spin out eternal schemes,
As we the fatal sisters could outspin,
And, big with life's futurities, expire.

—Young.

Cowards die many times before their deaths:
The valiant never taste of death but once.
Of all the wonders that I yet have heard,
It seems to me most strange that men should fear,
Seeing that death, a necessary end,
Will come when it will come.

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I cannot tell what you and other men
Think of this life, but, for my single self,
I had as lief not be as live to be
In awe of such a thing as I myself.
I was born free as Cæsar, so were you;
We both have fed as well, and we can both
Endure the winter's cold as well as he.

The cloud-capp'd towers, the gorgeous palaces,
The solemn temples, the great globe itself,
Yea, all which it inherit, shall dissolve,
And, like this insubstantial pageant faded,
Leave not a rack behind.

I am far from presuming to give this accentuation as perfect. No two persons will accent the same passage alike. No person but a real adept would accent it twice alike. Perhaps two real adepts who should utter the same passage with infinite perfection yet by throwing the energy into different words might produce very different effects. I suppose that in those passages of Shakespeare, for example, no man but Garrick ever drew their full tone out of them, if I may borrow an expression from music. Let those who are disposed to criticise, therefore, try a few experiments themselves. I have essayed these short passages to let the foreigner see that the accent is not equal; that they are not to be read monotonously. I chose, too, the most pregnant passages, those wherein every word teems with latent meaning, that he might form an idea of the degrees of excellence of which this art is capable.

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He must not apprehend that all poets present the same difficulty. It is only the most brilliant passages. The great mass, even of good poetry, is easily enough read. Take the following examples, wherein little differences in the enunciation will not change the meaning sensibly.

Here, in cool grot and mossy cell,
We rural fays and faeries dwell;
Though rarely seen by mortal eye,
When the pale Moon, ascending high,
Darts through yon lines her quivering beams,
We frisk it near these crystal streams.

Her beams, reflected from the wave,
Afford the light our revels crave;
The turf, with daisies broider'd o'er,
Exceeds, we wot, the Parian floor;
Nor yet for artful strains we call,
But listen to the water's fall.

Would you then taste our tranquil scene,
Be sure your bosoms be serene:
Devoid of hate, devoid of strife,
Devoid of all that poisons life:
And much it 'vails you, in their place
To graft the love of human race.

And tread with awe these favor'd bowers,
Nor wound the shrubs, nor bruise the flowers;
So may your path with sweets abound;
So may your couch with rest be crown'd!
But harm betide the wayward swain,
Who dares our hallow'd haunts profane!

—SHENSTONE.

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To fair Fidele's grassy tomb
Soft maids and village hinds shall bring
Each opening sweet, of earliest bloom,
And rifle all the breathing Spring.

No wailing ghost shall dare appear
To vex with shrieks this quiet grove,
But shepherd lads assemble here,
And melting virgins own their love.

No wither'd witch shall here be seen,
No goblins lead their nightly crew;
The female fays shall haunt the green,
And dress thy grave with pearly dew;

The red-breast oft at evening hours
Shall kindly lend his little aid,
With hoary moss, and gather'd flowers,
To deck the ground where thou art laid.

When howling winds, and beating rain,
In tempests shake thy sylvan cell;
Or 'midst the chase on every plain,
The tender thought on thee shall dwell.

Each lonely scene shall thee restore,
For thee the tear be duly shed;
Belov'd, till life can charm no more
And mourn'd, till Pity's self be dead.

—COLLINS.

OF THE LENGTH OF VERSE.

Having spoken of feet which are only the constituent part of verse, it becomes necessary to say something of its larger divisions, and even of the

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verse itself. For what is a verse? This question naturally occurs, and it is not sufficiently answered by saying it is a whole line. Should the printer think proper to print the following passage in this manner:

Ὡς εἰπὼν οὖ παιδὸς ὀρέξατο φαίδιμος Ἕκτωρ. ἆψ δ' ὁ πάϊς πρὸς κόλπον ἐϋζώνοιο τιθήνης ἐκλίνθη ἰάχων, πατρὸς φίλου ὄψιν ἀτυχθείς, ταρβήσας χαλκόν τε ἰδὲ λόφον ἱππιοχαίτην, δεινὸν ἀπ' ἀκροτάτης κόρυθος νεύοντα νοήσας ἐκ δ' ἐγέλασσε πατήρ τε φίλος καὶ πότνια μήτηρ. αὐτίκ' ἀπὸ κρατὸς κόρυθ' εἵλετο φαίδιμος Ἕκτωρ, καὶ τὴν μὲν κατέθηκεν ἐπὶ χθονὶ παμφανόωσαν· αὐτὰρ ὅ γ' ὂν φίλον υἱὸν ἐπεὶ κύσε πῆλέ τε χερσίν, εἶπεν ἐπευξάμενος Διΐ τ' ἄλλοισίν τε θεοῖσι· Ζεῦ ἄλλοι τε θεοί, δότε δὴ καὶ τόνδε γενέσθαι παῖδ' ἐμόν, ὡς καὶ ἐγώ περ, ἀριπρεπέα Τρώεσσιν, ὧδε βίην τ' ἀγαθὸν καὶ Ἰλίου ἶφι ἀνάσσειν· καὶ ποτέ τις εἴποι, 'πατρός γ' ὅδε πολλὸν ἀμείνων' ἐκ πολέμου ἀνιόντα· φέροι δ' ἔναρα βροτόεντα κτείνας δηΐων ἄνδρα, χαρείη δὲ φρένα μήτηρ. Ὡς εἰπὼν ἀλόχοιο φίλης ἐν χερσὶν ἔθηκε παῖδ' ἑόν· ἡ δ' ἄρα μιν κηώδεϊ δέξατο κόλπῳ δακρυόεν γελάσασα· πόσις δ' ἐλέησε νοήσας, χειρί τέ μιν κατέρεξεν ἔπος τ' ἔφατ' ἔκ τ' ὀνόμαζε·

it would still be verse; it would still immortalize its author were every other syllable of his compositions lost. The poet then does not depend on the printer to give a character to his work. He has studied the human ear. He has discovered that in any rhythmical composition the ear is pleased to find at certain regular intervals a pause where it may rest, by which it may divide the composition into parts, as a piece of music is divided into bars. He contrives to mark this division by a pause in the sense or at least by an emphatical word which may force the pause so that the ear may feel the regular return

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of the pause. The interval then between these regular pauses constitutes a verse. In the morsel before cited this interval comprehends six feet, and though it is written in the manner of prose, yet he who can read it without pausing at every sixth foot, like him who is insensible to the charm of music, who is insensible of love or of gratitude, is an unfavored son of nature to whom she has given a faculty fewer than to others of her children, one source of pleasure the less in a world where there are none to spare. A well-organized ear makes the pause regularly whether it be printed as verse or as prose. But not only the organization of the ear but the character of the language have influence in determining the length of the verse. Otherwise the constitution of the ear being the same with all nations the verse would be of the same length in all languages, which is not the case. But the difference in language occasions the ear to be pleased with a difference of interval in the pause. The language of Homer enabled him to compose in verse of six feet; the English language cannot bear this. They may be of one, two, three, four, or five feet, as in the following examples:

One foot.

Turning
Burning
Changing
Ranging

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I mourn
I sigh
I burn
I die
Let us part—
Let us part
Will you break
My poor heart?

Two feet.

Flow'ry mountains
Mossy fountains
Shady woods
Crystal floods
To me the rose
No longer glows
Ev'ry plant
Has lost its scent.

Prithee Cupid no more
Hurl thy darts at threescore
To thy girls and thy boys
Give thy pains and thy joys.

Three feet.

Farewell fear and sorrow
Pleasure till to-morrow.

Yes, ev'ry flow'r that blows
I passed unheeded by
Till this enchanting rose
Had fix'd my wand'ring eye.
—CUNNINGHAM.

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The rose though a beautiful red
  Looks faded to Phyllis's bloom;
And the breeze from the bean-flower bed
  To her breath's but a feeble perfume;
A lily I plucked in full pride
  Its freshness with hers to compare,
And foolishly thought till I try'd
  The flow'ret was equally fair.

—CUNNINGHAM.

Four feet.

From the dark tremendous cell
Where the fiends of magic dwell
Now the sun hath left the skies
Daughters of Enchantment, rise!

—CUNNINGHAM.

Come Hope, and to my pensive eye
Thy far foreseeing tube apply
Whose kind deception steals us o'er
The gloomy waste that lies before.

—LANGHORNE.

'Mongst lords and fine ladies we shepherds are told
The dearest affections are barter'd for gold
That discord in wedlock is often their lot
While Cupid and Hymen shake hands in a cot.

—CUNNINGHAM.

Here the parisyllabic alone bears one foot more.

Oh liberty! thou goddess heav'nly bright
Profuse of bliss, and pregnant with delight,
Eternal pleasures in thy presence reign,
And smiling Plenty leads thy wanton train;
Eas'd of her load subjection grows more light,

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And Poverty looks cheerful in thy sight;
Thou mak'st the gloomy face of nature gay.
Giv'st beauty to the sun, and pleasure to the day.
—ADDISON.

The last line furnishes an instance of six feet, usually called an Alexandrian; but no piece is ever wholly in that measure. A single line only is tolerated now and then, and is never a beauty. Formerly it was thought that the language bore lines of seven feet in length, as in the following:

'Tis he whose ev'ry thought and deed by rules of virtue moves;
Whose gen'rous tongue disdains to speak the thing his heart disproves
Who never did a slander forge his neighbor's fame to wound;
Nor listen to a false report by malice whisper'd round.
—PSALM 15.

But a little attention shows that there is as regular a pause at the fourth foot as at the seventh, and as verse takes its denomination from the shortest regular intervals, this is no more than an alternate verse of four and of three feet. It is, therefore, usually written as in the following stanzas of the same piece:

Who to his plighted vows and trust
Has ever firmly stood
And, though he promise to his loss,
He makes his promise good.

The man who by this steady course
Has happiness ensur'd
When earth's foundations shake, will stand
By Providence secur'd.

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We may justly consider, therefore, verses of five feet as the longest the language sustains, and it is remarkable that not only this length, though the extreme, is generally the most esteemed, but that it is the only one which has dignity enough to support blank verse, that is, verse without rhyme. This is attempted in no other measure. It constitutes, therefore, the most precious part of our poetry. The poet, unfettered by rhyme, is at liberty to prune his diction of those tautologies, those feeble nothings necessary to introtrude the rhyming word. With no other trammel than that of measure he is able to condense his thoughts and images and to leave nothing but what is truly poetical. When enveloped in all the pomp and majesty of his subject he sometimes even throws off the restraint of the regular pause:

> Of Man's first disobedience, and the fruit
> Of that forbidden tree, whose mortal taste
> Brought death into the world, and all our woe,
> With loss of Eden, till one greater Man
> Restore us, and regain the blissful seat,
> Sing, heavenly Muse! that on the sacred top
> Of Oreb, or of Sinai, didst inspire
> That shepherd, who first taught the chosen seed,
> In the beginning, how the Heavens and Earth
> Rose out of Chaos.
>
> Then stay'd the fervid wheels, and in his hand
> He took the golden compasses, prepared
> In God's eternal store, to circumscribe
> This universe, and all created things

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One foot he centred, and the other turn'd
Round, through the vast profundity obscure
And said, "Thus far extend."

There are but two regular pauses in this whole passage of seven verses. They are constantly drowned by the majesty of the rhythm and sense. But nothing less than this can authorize such a license. Take the following proof from the same author:

Again, God said, "Let there be firmament
Amid the waters, and let it divide
The waters from the waters;" and God made
The firmament. —MILTON 7: 261.

And God said, Let there be a firmament in the midst of the waters, and let it divide the waters from the waters.
And God made the firmament. —GENESIS 1: 6.

I have here placed Moses and Milton side by side, that he who can may distinguish which verse belongs to the poet. To do this he will not have the aid either of the sentiment, diction or measure of poetry. The original is so servilely copied that though it be cut into pieces of ten syllables, no pause is marked between these portions.

What proves the excellence of blank verse is that the taste lasts longer than that for rhyme. The fondness for the jingle leaves us with that for the rattles and baubles of childhood, and if we continue to read rhymed verse at a later period of life it is such only where the poet has had force enough to bring great beauties of thought and diction into

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this form. When young any composition pleases which unites a little sense, some imagination, and some rhythm, in doses however small. But as we advance in life these things fall off one by one, and I suspect we are left at last with only Homer and Virgil, perhaps with Homer alone. He like

> Hope travels on nor quits us when we die.

Having noted the different lengths of line which the English poet may give to his verse it must be further observed that he may intermingle these in the same verse according to his fancy.

The following are selected as examples:

> A tear bedews my Delia's eye,
> To think yon playful kid must die;
> From crystal spring, and flowery mead,
> Must, in his prime of life, recede!
>
> She tells with what delight he stood,
> To trace his features in the flood;
> Then skipp'd aloof with quaint amaze,
> And then drew near again to gaze.
>
> —SHENSTONE.

> Full many a gem of purest ray serene
> The dark unfathomed caves of ocean bear;
> Full many a flower is born to blush unseen,
> And waste its sweetness on the desert air.
>
> Some village Hampden, that, with dauntless breast,
> The little tyrant of his fields withstood,
> Some mute inglorious Milton here may rest,
> Some Cromwell, guiltless of his country's blood.
>
> —GRAY.

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There shall my plaintive song recount
  Dark themes of hopeless woe,
And faster than the drooping fount
  I'll teach mine eyes to flow.

There leaves, in spite of Autumn green
  Shall shade the hallow'd ground,
And Spring will there again be seen
  To call forth flowers around.

—SHENSTONE.

O Health! capricious maid!
  Why dost thou shun my peaceful bower,
  Where I had hope to share thy power,
And bless thy lasting aid?

—SHENSTONE.

The man whose mind, on virtue bent
Pursues some greatly good intent
    With undivided aim
Serene beholds the angry crowd
Nor can their clamors fierce and loud
    His stubborn purpose tame.

Ye gentle Bards! give ear,
  Who talk of amorous rage,
Who spoil the lily, rob the rose,
Come learn of me to weep your woes:
  "O sweet! O sweet Anne Page!"

—SHENSTONE.

Too long a stranger to repose,
At length from Pain's abhorred couch I rose
  And wander'd forth alone,
To court once more the balmy breeze,
And catch the verdure of the trees,
  Ere yet their charms were flown.

—SHENSTONE.

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O thou, by Nature taught
To breathe her genuine thought,
In numbers warmly pure, and sweetly strong;
Who first, on mountains wild,
In Fancy, loveliest child,
Thy babe, and Pleasure's, nursed the powers of song!

—COLLINS.

'Twas in a land of learning,
The Muse's favorite city,
Such pranks of late
Were play'd by a rat,
As—tempt one to be witty.

—SHENSTONE.

Yet stay, O stay! celestial Pow'rs!
And with a hand of kind regard
Dispel the boisterous storm that low'rs
Destruction on the fav'rite bard;
O watch with me his last expiring breath
And snatch him from the arms of dark oblivious death.

—GRAY.

What is grandeur, what is power?
Heavier toil, superior pain.
What the bright reward we gain?
The grateful memory of the good.
Sweet is the breath of vernal shower,
The bee's collected treasures sweet,
Sweet music's melting fall, but sweeter yet
The still small voice of gratitude.

Methinks I hear, in accents low,
The sportive, kind reply:
Poor moralist! and what art thou?
A solitary fly!
Thy joys no glittering female meets,

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No hive hast thou of hoarded sweets,
No painted plumage to display;
On hasty wings thy youth is flown;
Thy sun is set, thy spring is gone—
We frolic while 'tis May.

—GRAY.

Then let me rove some wild and heathy scene;
Or find some ruin, 'midst its dreary dells,
Whose walls more awful nod
By thy religious gleams.

Or, if chill blustering winds, or driving rain,
Prevent my willing feet, be mine the hut,
That, from the mountain's side,
Views wilds, and swelling floods.

—COLLINS.

Though the license to intermingle the different measures admits an infinitude of combinations, yet this becomes less and less pleasing in proportion as they depart from that simplicity and regularity of which the ear is most sensible. When these are wholly or nearly neglected, as in the lyric pieces, the poet renounces one of the most fascinating charms of his art. He must then look well to his matter and supply in sublimity or other beauties the loss of regular measure. In effect these pieces are seldom read twice.

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